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CONFLICTING LAWS AND REGULATIONS: GRIDLOCK ON THE NATIONAL FORESTS

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON FORESTS AND FOREST HEALTH

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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OVERSIGHT HEARING ON CONFLICTING LAWS AND REGULATIONS: GRIDLOCK ON THE NATIONAL FORESTS

Tuesday, December 4, 2001
U.S. House of Representatives
Subcommittee on Forests and Forest Health
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to call, at 3:10 p.m., in room 1334, Longworth House Office Building, Hon. John Peterson presiding.

STATEMENT OF THE HON. JOHN PETERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. PETERSON. [Presiding.] Good afternoon. We welcome you to the Subcommittee on Forests and Forest Health. This hearing will come to order. The Subcommittee is meeting today to hear testimony on Conflicting Laws and Regulations— Gridlock on the National Forests.

I am going to share the statement of our Chairman who is en route. The laws and regulations that govern the national forest and public lands are the result of more than 200 years of American democracy. Federal land management policy has changed dramatically over this time, reflecting a change in public values, opinions, and priorities. Unfortunately, as this body of law has evolved and expanded over the decades, policymakers and the Forest Service have failed to effectively integrate the sea of relevant laws, regulations, and court decisions. The result is a mishmash of congressional mandates, administrative directives, and court decisions that do not fit into a larger coherent pattern for Federal land managers or the American public. Instead of providing clear and consistent direction about the purposes and priorities of our public lands and the national resources, the combined effect of these laws and regulations have often created a vicious cycle of confusion, conflict on the ground. The result is a decisionmaking process that is more likely to produce gridlock than progress.

Let me be clear on this point, though. The overwhelming majority of laws and regulations now on the books were implemented with the best of intentions and for some policy objectives that are so important. But the reality is that together these laws and regs are not functioning effectively or efficiently together. They have

created a decisionmaking apparatus that is on the verge of collapsing under its own weight.

The implications of this statement have been ominous for communities throughout the West and around the Nation. In Steamboat Springs, Colorado, for example, a community nestled along the Routt National Forest, conflict among laws and regulations dramatically slowed the response time of Forest Service officers following a massive blow-down and beetle kill. The blow-down occurred in 1997, and yet because this needed forest management work implicated the Wilderness Act, the Endangered Species Act, the Clear Water Act, the Roadless Initiative and numerous other regulations, the Forest Service is just now finishing its NEPA work in spite of a determined effort. This delay allowed the beetle epidemic to spread to numerous high-risk areas throughout the forest. The beetle kill has now also reached private lands as well.

The Forest Service has experienced this kind of conflict up close and personal for years now. Thanks to the competing goals and values of numerous laws and regulations, it has become an agency without a clear mission or purpose.

The General Accounting Office recognized the negative impact of these competing demands on the Forest Service nearly 5 years. In a 1997 report, the GAO identified the requirements of numerous planning and environmental laws that have not been harmonized as a primary cause of inefficiency and ineffectiveness in the Forest Service's decisionmaking process. Two years before that, then Chief of the Forest Service, Jack Ward Thomas, who is here with us today, made a similar argument. We are now closing in on 2001 and gridlock still prevails. Clearly, that must change.

Policy for the national forests and public land should establish clear management priorities. Although the legislative intent and organizational goals must be clear, there is also need for flexible local implementation that meets the local and regional needs.

Finally, the laws and regulations that govern management of our national forests must be more thoroughly integrated so that progress will be the norm instead of impasse.

I know that injecting some common sense back into the Forest Service decisionmaking process is a priority for you, Mr. Bosworth. It is for this Subcommittee, too. We look forward to working with you, your agency, and other witnesses testifying here today toward that end. I guess we do not have a minority statement at this time.

[The prepared statement of Mr. McInnis follows:]

Statement of The Honorable Scott McInnis, Chairman, Subcommittee on Forests and Forest Health

The laws and regulations that govern the national forests and public lands are the result of more than 200 years of American democracy. Federal land management policy has changed dramatically over this time, reflecting a change in public values, opinions and priorities. Unfortunately, as this body of law has evolved and expanded over the decades, policy makers and the Forest Service have failed to effectively integrate the sea of relevant laws, regulations and court decisions. The result is a mishmash of congressional mandates, administrative directives and court decisions that do not fit into a larger coherent pattern for federal land managers or the American public. Instead of providing clear and consistent direction about the purposes and priorities of our public lands and natural resources, the combined effect of these laws and regulations has often created a vicious cycle of confusion and conflict on the ground. The result is a decision-making process that's more likely to produce gridlock than progress.

Let me be clear on this point, though—the overwhelming majority of laws and regulations now on the books were implemented with the best of intentions and for policy objectives that are still important. But the reality is, together these laws and regs are not functioning effectively or efficiently together. They have created a decision-making apparatus that is on the verge of collapsing under its own weight.

The implications of this stalemate have been ominous for communities throughout the West and around the nation. In Steamboat Springs, Colorado, for example - a community nestled along the Routt National Forest in my District—conflict among laws and regulations dramatically slowed the response time of Forest Service officers following a massive blow-down and beetle kill. The blow-down occurred in 1997; and yet, because the needed forest management work implicated the Wilderness Act, the Endangered Species Act, the Clean Water Act, the Roadless Initiative and numerous other regulations, the Forest Service is just now finishing its NEPA work, in spite of a determined effort. This delay allowed the beetle epidemic to spread to numerous high-risk areas throughout the Forest. The beetle kill has now also reached private lands as well.

The Forest Service has experienced this kind of conflict up close and personal for years now. Thanks to the competing goals and values of numerous laws and regulations, it has become an agency without a clear mission or purpose.

The General Accounting Office recognized the negative impact of these competing demands on the Forest Service nearly 5 years ago. In a 1997 report, the GAO identified the requirements of numerous planning and environmental laws that have not been harmonized as a primary cause of inefficiency and ineffectiveness in the Forest Service's decision-making process. Two years before that, then Chief of the Forest Service Jack Ward Thomas - who is here with us today—made a similar argument. We are now closing in on 2001 and gridlock still prevails. Clearly, that must change.

Policy for the national forests and public lands should establish clear management priorities. Although the legislative intent and organizational goals must be clear, there is also a need for flexible, local implementation, that meets local and regional needs. Finally, the laws and regulations that govern management of our national forests must be more thoroughly integrated, so that progress will be the norm instead of impasse.

I know that injecting some common sense back into the Forest Service's decision-making process is a priority for you, Mr. Bosworth. It is for this Subcommittee too. We look forward to working with you, your agency and the other witnesses testifying here today toward that end.

Mr. PETERSON. I would like to introduce our witnesses. On the Panel we have Mr. Dale Bosworth, Chief, USDA Forest Service, and Mr. Jack Ward Thomas, former Chief of the USDA Forest Service. So we not only have current management, but we have the wisdom of those who have been there.

Let me remind the witnesses that under our Committee rules, you must limit your oral statements to 10 minutes. You have just been given twice the normal time—I tell you, this guy is being lenient—but your entire statement will appear in the record. Now it gives me a great deal of pleasure to recognize Chief Bosworth for his statement. Dale, welcome.

STATEMENT OF DALE BOSWORTH, CHIEF, USDA FOREST SERVICE

Mr. BOSWORTH. Thank you. Mr. Chairman, I would like to start by reading something that was given to me today that I thought was pertinent to this hearing. According to Greek mythology, Sisyphus was condemned to ceaselessly rolling a rock to the top of a mountain, whence the stone would fall back of its own weight. The gods had thought that there was no more dreadful punishment than such a futile and hopeless task.

The gods had never envisioned the Forest Service's decision-making process. And, truly, our process is like rolling a stone to the

top of a mountain and having it roll back down, and endlessly doing that.

I thank you for this opportunity to testify this afternoon. I have been looking forward to this hearing. This is very important to the Forest Service.

I would like to start by sharing some goals that I have. Forest Service employees and I are truly committed to the goals of protecting and improving the quality of the land, improving the quality of the water, the wildlife, the air, as well as the goals of protecting and preserving the Nation's historic and cultural resources. I do believe that the Forest Service can do this, utilizing broad authorities that are provided by statute and that have never been rescinded, to make choices among a whole range of public benefits in determining the proper management for national forests and grasslands.

I believe the Forest Service needs to be judged based upon what we leave on the land, and I am personally prepared to abide by that judgment.

I want to talk about improving agency decisionmaking so that line officers can truly, in a productive way, engage the stakeholders so that we can surface issues: so we can secure the necessary consultations, necessary permits and approvals; so we can focus on the environmental aspects that really do matter and merit detailed analysis; and make decisions in a more timely fashion.

Since I have become Chief, I have talked a lot of times to people in different places about the "analysis paralysis" that I believe grips the Forest Service. I use that expression to talk about the difficult, costly, confusing, seemingly endless processes that have been put in place in order for our agency line officers to comply with the laws that were enacted by Congress, and the implementing regulations that were put in place by the Forest Service as well as other agencies.

These processes involve a lot of people, they result in a lot of studies and analyses, and they involve many administrative appeals and lots of litigation. Too frequently, these processes combine to keep work from happening on the ground and we often never get the work accomplished on the ground, even on real small projects that really have environmental merit. The inability to complete projects can have a huge effect, detrimental effect, on the land. We really have too little to show for our efforts, except sometimes completion of the process, without getting the work done on the ground in the end. Too little value returns to the public with the resources that we are supposed to be managing and protecting.

I would like to give an example. Last year I was regional forester in the northern region, and in Montana we had some huge fires in the Bitterroot Valley. Those fires burned in the Bitterroot National Forest and also the Sula State Forest, which is adjacent to the national forest. The State salvaged 22 million boardfeet of fire-killed wood by the summer, and they had a little bit more, 4 to 6 million to do, last I had heard. In contrast, the Bitterroot National Forest finally completed the final environmental impact statement in October. On November 23rd, I requested that our Under Secretary exercise his authority to make the decision on whether or not to proceed with the project.

Now, I realize that this course is going to result in the decision not being subject to administrative appeal. And I believe that the administrative appeal procedure in this case would add very little to the quality of the decisionmaking, and it would unnecessarily delay the implementation of some really needed restoration activities. Regardless of our course of action, though, it is clear that this matter is going to be challenged in court, and I guess I believe that we need to move rapidly to court to seek resolution.

I also proposed that the Under Secretary delay his decision on the project until the 10th of December so we can provide for public notice before he makes that final decision.

While there may be some legitimate reasons for differences between the way that the Sula State Forest and Bitterroot National Forest reach decisions, I am not satisfied with the kind of result that we have.

Your letter of invitation that was sent to me said that this afternoon's hearing was going to be to examine the conflicting laws and regulations, as well as the negative effects in the growing impacts of regulation by other Federal agencies, and then to identify some possible solutions.

You refer to the "conflicting laws." some people talk about the "crazy quilt of laws," and some refer to analysis paralysis and gridlock.

First, many times I don't think that this is a conflict necessarily between commodity production and environmental stewardship. Conserving national environments has been a statutory responsibility of the Forest Service for a long time.

And, second, I don't believe that the laws—I don't necessarily believe the laws themselves conflict. Their coordination, though, I do believe, presents a huge challenge. One fundamental challenge is the limits on management discretion afforded the agency line officers that resulted from the numerous laws that we have to comply with.

And, just to name a few, the Organic Administration Act of 1897, the Multiple Use Sustained Yield Act of 1960, the Forest and Rangeland Renewable Resources Act of 1974. These shaped the management of the National Forest System by requiring the Forest Service to apply the principles of multiple use and sustained yield to meet the needs of the American people.

Now, there wasn't any specific direction on how to meet the management choice. Since the 1960's, though there have been a huge number of other laws that have been passed. The Endangered Species Act, the National Historic Preservation Act, the Clear Air Act, the Clean Water Act, the National Environmental Policy Act, the National Forest Management Act, the Federal Land Policy and Management Act, the Administrative Procedures Act, the Federal Advisory Committee Act are some of those that have been passed that have all too often been interpreted and implemented in ways that really do constrict the ability of our land managers on the ground to make choices or to exercise any kind of broad discretion in determining the appropriate actions that need to be taken. These are well intentioned and they are good laws. The problem is the thousands and thousands of pages of regulations have been put together to implement those.

The direction on how an agency is to arrive at a decision under each law has created an extremely complex operating arena. I believe that there is a lot of confusion by the public on how these laws interact and how they are to be implemented, even by those people who have been working with us for a long time. It is those things that I talk about when I am talking about analysis paralysis.

And resolving this analysis paralysis is pretty much my No. 1 priority. And I want to go after this problem head on, and I don't want to get into a bunch of finger pointing or blaming people, blaming another agency or others for the problem. I think that we are part of the problem in the Forest Service. We need to deal with it.

The second challenge, I think, results from just sort of the natural tension that exists between our desires as managers to have clearly defined, logical, and understandable processes that produce timely decisions on one hand, and then the time that is needed to consider the relevant information, on the other hand, about a vast and complex and ever-changing environment.

The public, I think, expects our processes to use the best available information, and to result in timely decisions and implementation. We also need to be interacting with Federal, State, local, tribal governments, local communities, scientists, citizens, and public interest groups so that we consider these different viewpoints or these disparate views in our decisionmaking process, and provide appropriate opportunities for redress for those who disagree with our decision.

Every decision or every action that affects the environment represents an opportunity for appeal or litigation for those who are unsatisfied with the resolution of an issue. And I don't believe that is inherently bad, I just think that it can prevent it from ever coming up with a final decision.

I will say that I am somewhat troubled that each step of this process is being used more and more as a forum for debate over national policy as much as specific issues that are related to a particular project.

Those people who disagree with national policy or congressional intent use the appeal and litigation opportunities to question that policy over and over again. And then the district ranger is having to deal with that public policy issue.

I have been with the Forest Service for a long time, and have a lifetime of being involved in the culture and the debate on these issues. I have had a lot of jobs, and I have developed an appreciation for how the job is performed on the ground by our employees. Getting these jobs done with our employees is really the foundation of our credibility with the public.

One of greatest strengths of the Forest Service has been the ability of our folks at the district level in the forest to make and implement decisions that have taken national and local interests into account and to strike the appropriate balance.

The problem is not new. We have talked about the effects and symptoms for a lot. I don't want to get into analysis paralysis about analysis paralysis. We need to come up with a solution. We are doing a number of things that I would be happy to talk about in

the questions. But we have taken on some efforts with contractors to look at our processes, pointed out that we have over 800 different steps in our decisionmaking processes. We have a couple of teams that are looking at different opportunities to work with the environmental laws. And I am going to have some recommendations and suggestions when those teams' work are complete.

So, as I said, I think we have great opportunities to make some significant changes. I am looking forward to working with you to be able to accomplish some changes. It is really important to me that we are able to get some bipartisan support for working together with you to come up with some changes that are going to result in a more effective, efficient process for the Forest Service.

So that concludes my statement. I would be happy to answer any questions that you have may have.

Mr. PETERSON. We thank you, Chief Bosworth for your testimony.

[The prepared statement of Mr. Bosworth follows:]

Statement of Dale Bosworth, Chief, Forest Service, U.S. Department of Agriculture

Mr. Chairman,

Thank you for this opportunity to testify this morning on the laws and regulations governing the management of this nation's national forests and grasslands.

Mr. Chairman, let me begin by sharing my goals. Forest Service employees and I are committed to the goals of protecting and improving the quality of our land, our water, our wildlife, and our air and with the goals of protecting and preserving this nation's precious historic and cultural resources. I believe the Forest Service can do so utilizing its broad authorities, provided by statute and never rescinded, to make choices among the whole range of public benefits in determining the proper management of national forests and grasslands.

The Forest Service should be judged by "how we leave the land," and I am personally prepared to abide by that judgment. Forest Service managers will continue their efforts to ensure that all land management decisions are based on a collaborative, integrated approach that addresses the environmental implications of our actions in a timely and efficient manner. That is how it should be.

I want to talk to you this morning about improving agency decision making so that line officers can engage stakeholders, vet issues, secure all necessary consultations, permits and approvals, focus on the environmental aspects that truly matter and merit detailed analysis, and make decisions in a timely fashion.

Since I was privileged to be named by Secretary Veneman as the Chief, I have spoken many times about the "analysis paralysis" that grips the Forest Service.

When I use that expression, I mean the difficult, costly, confusing and seemingly endless processes that have been put in place in order for agency line officers to comply with the laws enacted by Congress and the implementing regulations put in place by the Forest Service and other agencies.

Those processes involve many people, result in many studies and analyses and involve many administrative appeals and much litigation. Too frequently, however, these processes combine to keep on-the-ground work from ever actually being accomplished, even very small projects or projects of great environmental merit. The inability to complete projects can have a detrimental effect on the land. We have too little to show for our efforts except for completion of the processes. Too little value returns to the public, or the resources that we are charged with protecting and managing.

Let me share an example. Last year in Montana, when I was Regional Forester, we had huge fires in the Bitterroot Valley. Fires burned in both the Bitterroot National Forest and the Sula State Forest, which is adjacent to the national forest. The Bitterroot's final environmental impact statement to cover post-fire treatment and rehabilitation was released in October. On November 23, I proposed that the Under Secretary delay his decision on the project until December 10 to provide public notice that the Under Secretary would be making the final decision on the project. In contrast, the State finished salvage of 22 million board feet of fire-killed and damaged timber this summer and will harvest the remaining 4–6 million board feet this year.

While there may be some legitimate reasons for this disparity in reaching the point of on-the-ground action, I am not satisfied with this result.

Your letter of invitation said this morning's hearing was to examine the conflicting laws and regulations, as well as the negative effects and the growing impacts of regulation by other federal agencies and to identify some possible solutions.

You refer to the "conflicting laws." Others talk about the "crazy quilt of laws." Let me make several points:

First, many times this is not a conflict between commodity production and environmental stewardship. Conserving natural environments has been a statutory responsibility of the Forest Service since it was created, even as it was charged with producing timber, forage and other commodities.

Second, while I do not believe the laws conflict, their coordination does present complex challenges.

One fundamental challenge is the limits on management discretion afforded agency line officers that have resulted from the numerous laws with which the Forest Service must comply.

The Organic Administration Act of 1897, the Multiple Use–Sustained Yield Act of 1960, and the Forest and Rangeland Renewable Resources Planning Act of 1974 shaped the management of the National Forest System by requiring the Forest Service to apply the principles of multiple use and sustained yield to meet the diverse needs of the American public. Specific direction on how to make the management choices was not provided.

Since the mid–1960's, there have been a plethora of authorities that affect the Forest Service and all other federal land management agencies. The Endangered Species Act, the National Historic Preservation Act, the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, the National Forest Management Act, the Federal Land Policy and Management Act, the Administrative Procedure Act, and the Federal Advisory Committee Act, among others, with some exceptions, have all too often been interpreted and implemented in ways that constrict the ability of land managers to make choices or to exercise broad discretion in determining the appropriate management of forests.

However well intentioned, Congress has enacted multiple laws and the Forest Service and other agencies have promulgated thousands of pages of regulations that often contain overlapping and sometimes conflicting requirements, procedural redundancies and multiple layers of interaction. The direction on how an agency is to arrive at a decision under each law has created an extremely complex operating arena. There is considerable confusion by the public, even by seasoned and experienced participants, with the processes and the decisions being made, as well as interpreting the requirements for making decisions.

That's what I mean by "analysis paralysis." Resolving this analysis paralysis is my highest priority.

I want to address this problem head on, not engage in finger pointing, or blaming everybody but us for the current problem. In written reports and hearing testimony, the General Accounting Office and others have detailed their views on the underlying causes of inefficiency and ineffectiveness in the Forest Service's decision-making. No question—we share responsibility for the problem. But we cannot fix the current problem by ourselves.

A second challenge results from the natural tension that exists between our desires as managers for clearly defined, logical, and understandable processes that produce timely decisions on one hand and the time needed to consider all relevant information about a vast, complex, and ever-changing environment. The public expects our processes to use the best available information and to result in timely decisions and implementation. The processes dictated by regulation for incorporating new information into decision making, however, create the potential for never getting out of the planning loop or halting projects already under way.

We also need to interact with Federal, state, local, and tribal governments, local communities, scientists, citizens and public interest groups so that we consider disparate views into our decision making and provide appropriate opportunities for redress to those who disagree with our decisions. Every decision or agency action that affects the environment represents an opportunity for appeal or litigation for those who are not completely satisfied with the proposed resolution of an issue, the implementation of a project, or active management of federal lands. That is not inherently bad, but this can prevent an agency from ever finalizing a decision.

Mr. Chairman, I have a lifetime of being part of the Forest Service culture, traditions, and debate about the management of America's forests and rangelands. In 35 years working in the Forest Service, I've had many jobs and I have developed an appreciation for how the job being performed on-the-ground by our employees is the foundation of our credibility with the public. One of the greatest strengths of the

Forest Service has been the ability of line officers at the ranger district and forest levels to make and implement decisions that take national and local interests into account and strike an appropriate balance. We need to get that flexibility back. And we won't until we fix this analysis paralysis.

Mr. Chairman, this problem is not new. We've talked about the effects and the symptoms a lot. We don't need analysis paralysis about analysis paralysis. It's time we start trying to do something to get good, sound decisions and project implementation. Here's what the Forest Service is doing.

First and foremost, we have embarked on a close review of our own processes to reduce the time and expense it now takes to get work done. Not just to look, but also to make changes. It's very frustrating to our folks in the field and it's frustrating to us in Washington that we spend so much time and energy on our processes that add only marginal value to our decisions.

The agency's Inventory and Monitoring Institute, in collaboration with a business consultant, has begun assessing the activities required for project level planning and implementation. Using information from the laws, regulations, the Forest Service manual, agency handbooks, and the knowledge and experience of agency personnel with subject matter expertise, we are developing a model of the complex and numerous activities required. Legal and subject matter experts within the Executive Branch, including the Council on Environmental Quality, still must validate the draft model. But I believe it could serve as a sound and powerful tool that the Forest Service, other agencies and Congress could use to consider changes to the current the legal and regulatory framework.

I have also tasked a team to update former Chief Jack Ward Thomas' study on the Forest Service legal and regulatory framework. You will hear today from Chief Thomas about his original report. We will update this work, taking into consideration new laws, regulations, and court decisions since the study was prepared in 1995. That report will identify how we can resolve the issues—through actions the Forest Service, as well as others can take.

Our frustration with the status quo provides us the motivation to examine our processes from top to bottom. Our focus is in large part on National Environmental Policy Act procedures because they provide the framework for analyzing our management decisions and, if done properly, integrate our consideration of all the other requirements set out in myriad laws, regulations and directives.

Our opportunity is real. No one doubts that integration is flawed or lacking, and that these same laws could be implemented more efficiently and effectively. I am dedicated to revising, not just reviewing, our processes. We must provide the best tools and training for our line officers and staff. As we put our house in order, any need for reforms beyond the Forest Service will become clearer. Our priority will then be to work with all the agencies that oversee the implementation of the environmental laws that affect our decision making and, if appropriate, to seek your help with legislative changes.

I expect our endeavors to resolve analysis paralysis will take significant effort and a great deal of time and will generate opposition.

The Council on Environmental Quality, which, as you know, is responsible for the NEPA regulations that apply to all federal agencies, and the other federal agencies and departments with whom we closely work, such as the Department of Commerce, the Department of the Interior, and the Environmental Protection Agency, share our desire to improve the effectiveness and efficiency of our processes. I know we can count on their support as we undertake this task.

I ask you and the other Members of this subcommittee to look at this issue with an open mind and give me a chance to work with you to find a way to make Forest Service land management decisions in an effective, efficient and timely manner.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions from you and the other Members of the Subcommittee.

Mr. PETERSON. Now I recognize Chief Thomas for 10 minutes, then we will question you both afterwards. Welcome.

STATEMENT OF JACK WARD THOMAS, BOONE AND CROCKETT PROFESSOR, SCHOOL OF FORESTRY, UNIVERSITY OF MONTANA, CHIEF EMERITUS, USDA FOREST SERVICE

Mr. THOMAS. Thank you. I started to say it is good to be back. But thank you.

The Forest Service and the communities it is part of are at a crossroads. The present state of affairs is a sad one and in the long term will prove intolerable. I don't know how it came to be. What can we do about the present state of affairs?

There are simply too many applicable laws with their pursuant regulations that don't mesh well or at all, and they seem to be meshing less and less well as time and circumstances change.

When I came into the chief's job, my political overseers assured me that all of the problems inherent in simultaneous compliance were merely the fact that the previous—that my predecessors had just not been willing to do it.

By the time I left the job, I knew that there were intractable roadblocks to management related to laws and regulation and the conflicts pursuant to those laws—legal interpretation and so on. However, if I examine every one of those laws in isolation, I daresay I can't find a one with which I disagree. Not a single one. But when they are considered in totality and the array of empowered agencies who wrote the regulations to achieve the objectives of the law and not coincidentally maximize the discretion and power of the drafting agencies, things get a little tough.

Then consider that the laws are applied by an array of departments and agencies dealing with various Subcommittees and Committees in the Senate and the House. Administrations come and go every 4 to 8 years. In the case of the land management agencies, this adds up to a disaster for isolated affected communities waiting for a time and place to happen as significant land management actions on the Federal estate grind to a halt.

There are two ways to judge ethical correctness of human endeavor. The first, which described Federal land management, is a teleological wherein the moral value of an action is the function of its consequences. I learned that now that I am a college professor; the ends justify the means. The second, which describes the present circumstance, is the deontological wherein the behavior is judged right or wrong according to its nature, regardless of outcome. In other words, the process is everything and the end result is insignificant.

If process is paramount and the outcome of little consequence, the likely result is paralysis analysis. And that is where we stand today.

The Forest Service, over decades of effort, carefully constructed the three-legged stool on which to stand to do its work. The National Forest Management Act—or the Multiple Use Sustained Yield Act, which was a modification of the Organic Act, mandated what we would do: water, timber, recreation, fish and wildlife and range management.

The purpose of the Forest and Rangeland Renewable Resources Planning Act was to allow the Forest Service to carry out periodic assessments of conditions of natural resources, but particularly what the Forest Service opportunities were. To be perfectly blunt about it, it was an attempt to point out to the Congress in an irresistible fashion what should be funded.

Thirdly, it sought to mandate to develop comprehensive plans. Now we had a three-legged stool, a master stroke—what to do, how to do it, how to fund it. Then, slowly, the stool wobbled and col-

lapsed under the stresses of compliance with other subsequent laws and shifts in public perception and demand.

Multiuse Sustained Yield Act collapsed as more and more land was zoned for special purposes: wilderness, wild and scenic rivers, national recreation areas, reserves of various kinds, habitat for threatened and endangered species, municipal watersheds, habitat for featured species, protection of biodiversity, protection of aesthetic values, protection of rare and special stands such as old growth, roadless areas and others.

And then when multiple-use demands were applied to the land that was left unzoned, the cost of meeting the process requirements of the National Environmental Policy Act and regulations issued pursuant to the National Forest Management Act proved to be so high that instituting any management action approached or exceeded the economic break-even point. Costs associated with appeals and court cases produced costs that exceeded benefits. Not only was multiple use dying from a thousand cuts, but any concept of stability related to predictability of resource output vanished.

Leg 2, the RPA failed to provide any significant leverage over the budget process.

Leg 3, the National Forest Management Act failed to achieve its objectives. The public could not be persuaded that even-aged timber management—that is, clear-cutting—was an acceptable broad-scale practice. And forest-by-forest planting took much, much longer than anticipated and cost much, much more than forecast. Further, the process, which was assumed would engender public trust and consensus, indeed produced polarization. In fact, the process birthed a new industry—the conflict industry. It has prospered on a diet of conflict, division, and consternation.

I don't believe that we have executed a single national forest plan as executed as planned. Why? New information comes to bear faster than the process can absorb it, and abrupt alterations in plans were required and species were declared to be threatened or endangered.

Further, regulatory agencies now have veto power over management action within areas determined by them to be critical habitat for threatened species. After a few years of such changes, there is quite commonly no longer any semblance of agreement between the original land use plan and the ongoing activity.

The regulations issued pursuant to the National Forest Management Act, which early on were demonstrated to be seriously flawed in terms of technical capability of achievement in the budget required for execution, have remained in place for 30 years. There was an attempt that those would be easily modified under the idea of adaptive management. That has proven to be a dream.

New regulations contained requirements that have been suggested are, in my opinion, technically impossible to achieve, and are so expensive that they would never be funded. The philosophy seems to have been one of require it and they will fund. That didn't happen. As another Chief emeritus observed, the Forest Service needed a life jacket and was handed an anvil.

Now we are engaged in a new round of forest planning. While the question of the planning regulations remains up in the air, at present it seems unlikely that after spending additional hundreds

of millions of dollars and expending hundreds of thousands of hours of the time of planners, interested public and the conflict industry, that very much will change.

You might consider this definition of insanity: Doing the same thing over and over and expecting to get a different result. If the new round of forest planning proceeds under the old regulations, although new ones are on the table and no changes are made, why would we expect a different outcome in terms of active management program?

There may be possible ways out of this impasse. I will suggest three. The first is the concept of a public land law review commission that can be brought out of history and dusted off. The last effort in 1969 came up with nothing but the conclusion that things were screwed up. That was before the onslaught of environmental legislation of the 1970's.

Option 1. That is, it maybe time to try that again. But the report should be in the form of alternative legislative packages for consideration and possible action. Uncoordinated piecemeal amendments of individual pieces of present legislation, if possible, would likely produce even more confusion.

The second is the regulations. The devil is in the regulations. They were not promulgated with any discernible evidence of their fitting together with other regulations or with any consideration of the impact of their enforcement on other agencies and their missions. However, the administration has authority and responsibility and capability to revise regulations. There could be a czar of regulations to simultaneously revise all the agency regulations, with the aim of coordination, simplification, and efficiency of public land management.

The last one is for people who live in communities involving national forests and are not content with the current state of affairs to exert some level of control over their own destinies. Their war cry can be taken from the old movie, Network, in which the central character became fed up with the status quo and began to scream, "I am mad as hell and I am not going to take it anymore," and others took up the cry.

Benjamin Franklin's observation, made on the occasion of the signing of the Declaration of Independence, has some applicability here. He said, "We must always hang together, or assuredly we will hang separately." and I think that is what people who are interested in local collaboration have in mind.

Personnel of the Forest Service are beginning a new round of planning. Believe me, they are as distressed about the current state of affairs as any other member in their community. They are good and dedicated civil servants; the vast, vast majority are good and caring people, charged with the care and tending of a most remarkable legacy that resides in the ownership of all of the people of the United States. They signed up to be something bigger, part of something bigger than any individual. They truly want to care for the land and serve people.

In this next round of planning they will serve more as facilitators than purveyors of a predetermined course of action. That is going to be a little messier than in the past, but I hope it will be much less drawn out. If the process draws out too long, the initial partici-

pants will drop out and leave the playing field to the conflict industry.

Decisions are made by those who show up, and the outcomes are determined by the majority or the minority that cares deeply. We see some wisdom there. In the end, it may be desirable to have the outcome a collaborative effort, blessed in law.

Why might this go-around be different than the last? Because things have changed. The eco-warriors have won the argument, capitalizing on environmental laws passed in the 1970's, the collapse of timber extraction during the Reagan-Bush administration, and 8 years of the Clinton-Gore administration's simpatico with the environmental constituency.

Fierce in battle, eco-warriors have been unable to come to grips with the consequences of victory, and they are now reduced to wandering about the old battlefield bayoneting the wounded. Their counterparts from the resource extraction community, likewise, cannot come to terms with the defeat and hold ghost dances to bring back the good old days when they were undisputed kings of the West.

It is time for a Marshal Plan, wherein the victors realize that the best means of maintaining their gains is by fostering a new spirit of cooperation and appreciation of the desirable aspects of western culture and a development and institution of a just peace.

Just maybe there has been a change in attitude that requires more gentility, courtesy, and respect in the process of making decisions. Those involved must unclench their first, make them into open hands; those open hands are extended to their neighbors.

Reflect on that symbolism: Open hand, open mind, open heart. In that simple gesture lies the best opportunity to bolster the well-being of involved communities. Perhaps now, after two decades of acrimony and frustration, weakened and fractured communities are ready to heal the age-old plea, first made centuries ago in the throes of conflict: Come, let us reason together. That recurrent refrain, without doubt, is the best wisdom in all. Will that ensure success? Maybe. Maybe not. That is, as well, for communities to reflect on the line often quoted by General George Washington during the American Revolution, as possibilities of success and defeat were in the balance: "we cannot assure success but we can deserve it." thank you.

[The prepared statement of Mr. Thomas follows:]

Statement of Jack Ward Thomas, Chief Emeritus, U.S. Forest Service and Boone and Crockett Professor of Wildlife Conservation, School of Forestry, University of Montana, Missoula, Montana

Members of the committee, thank you for inviting me to be here today.

AT THE CROSSROADS

The Forest Service (FS) and the communities of which they are part find themselves at a crossroads. My purpose is to make observations and suggestions, based on hard-earned 44 years of natural resources experience, for possible modifications in the status quo that might smooth the transition of FS associated communities into the 21st century.

A SAD STATE OF AFFAIRS

The present state of affairs is, in my opinion, a sad one—that, in the long run, will prove intolerable. How did this situation come to be? What can or should be done to alter the present state of affairs?

TOO MANY LAWS AND TOO LITTLE COMMON SENSE

There are too many applicable laws with their pursuant regulations which do not mesh well—or at all—and these laws and regulations seem to be meshing less and less well as time passes and circumstances change.

When I entered the Chief's job, my political overseers assured me that there were no insurmountable problems inherent in the simultaneous compliance with all applicable laws and regulations while carrying out the agenda of the Administration. The accumulating frustrations from the past were blamed on the unwillingness of prior Administrations to comply with applicable laws. I thought that was wrong. But, what did I know?

By the time I left the job, I knew, for certain, that there were roadblocks to management that were intractable and related to laws and regulations. Included are conflicts between laws; regulations issued pursuant to those laws; legal interpretations (*i.e.,* case law); ever changing budgets; power struggles between agencies; warring constituencies; internal strife within agencies; continuing declaration of threatened or endangered species; and political maneuvers to satisfy one constituency or another.

If we were to examine each of those myriad laws in isolation, I dare say that we would not find even one with which to disagree—not one. Then, consider those laws in their totality and the array of empowered agencies who wrote the regulations pursuant to the separate laws. Now consider that the regulations were developed to assure achievement of the objectives of the law and, not coincidentally, maximize the discretion and power of the agency drafting the regulations.

Then, consider that the laws are applied and/or enforced by an array of Departments (and Agencies embedded within those Departments). Each entity has its own cadre of skilled and accomplished personnel dedicated to the achievement of their individual unit's missions—and the simultaneous enhancement of their agency's power and authority. If that were not enough, the situation is further complicated by the structure of Committees and Sub–Committees in the Senate and House, who, likewise, fiercely guard "their" agencies and programs. Therein lies maximization of individual and collective power of the members of Congress.

On top of that, Administrations come and go at four to eight year intervals. They, or their minions, set the policies. Departments and Agencies, in turn, execute those policies through the budget, administrative actions, swaying Congress, and marshalling public opinion and political actions.

In the case of land management agencies, this adds up to a disaster for affected communities waiting for a time and place to occur. This disaster is upon us as significant land management actions on the Federal estate grind to a halt.

TWO APPROACHES TO ETHICAL CORRECTNESS

There are two approaches to judging the ethical correctness of outcomes of human endeavor. The first, which described federal land management of the past, is the teleological wherein the moral value of an action is a function of its consequences—*i.e.,* the ends justify the means. The second, which describes the present circumstance, is the deontological wherein an act or behavior is judged right or wrong according to its nature—regardless of outcome. *I.e.,* the process is everything and the end result insignificant.

If process is paramount and the outcome of little consequence, the likely result is "analysis paralysis" wherein ongoing processes lead to little or no management action. That is where we are today.

THE THREE–LEGGED STOOL THAT SUPPORTS THE FS—LEG 1

The FS, over decades of effort, carefully constructed a three-legged stool upon which to stand to do its work.

The Organic Act of 1897, which defined the purposes of the forest reserves (the national forests after 1905), states: "No national forest shall be established except to improve and protect the forests within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber"." When the FS was increasingly challenged by transfers of national forests to national parks, it sought a broadened mission through the Multiple–Use Sustained Yield Act of 1960 (MUSY). MUSY was an amendment to the Organic Act, which mandated the addition of recreation, fish and wildlife, and range management to the agency's portfolio.

THE THREE–LEGGED STOOL—LEG 2

The purpose of the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) was to attain the authority and responsibility for the FS to carry out periodic assessments of the conditions of the renewable natural resources of the

United States. But, particular attention was directed to assessment of the resources of the national forests and proposed programs of the FS to manage those resources for the benefit of the American people. Further, programs were to be developed and assessed on which to base FS actions to assist in private forest land management and a research organization to serve the needs of both the federal and private forest sectors. These assessments were to be produced every five years. The clear intent was to mandate FS programs and provide a means to influence budgets.

THE THREE–LEGGED STOOL—LEG 3

The FS now desired to develop comprehensive plans for each of the national forests. This led to the development and passage of the National Forest Management Act of 1976 (NFMA). After World War II, the FS increasingly relied on a program of even-aged timber management in spite of the instructions in the Organic Act of 1897 to cut only individually marked trees. A landmark judicial decision in 1975, the "Monongahela Decision," brought clear-cutting to a halt. The reaction was the passage of the NFMA which defined provisions under which clear-cutting could proceed and, more significantly, provided the FS with a mandate for planning management for each national forest.

A MASTER STROKE THAT MISSED THE MARK

There it was—a sturdy stool with three legs—what to do, how to do it, and how to fund needed action. By any measure it seemed a masterstroke, a reflection of bureaucratic skill and ability to maneuver through the labyrinth of the political process.

THE THREE–LEGGED STOOL IN COLLAPSE

Then, slowly but surely, the stool wobbled and collapsed under the stresses of compliance with subsequent laws and shifts in public perceptions and demands. Let us examine that collapse—one leg at a time.

Leg 1 — MUSY collapsed as more and more land was zoned for special purposes—Wilderness, Wild and Scenic Rivers, National Recreation Areas, and reserves of various kinds (riparian protection zones, habitat for threatened or endangered species, municipal watersheds, habitat for featured species, protection of biodiversity, protection of aesthetic values, protection of rare and special stands such as old-growth, roadless areas, and others). Then, when multiple-use demands were applied to land that was left, the costs of meeting process requirements of the National Environmental Policy Act (NEPA) and regulations issued pursuant to the NFMA proved to be so high that instituting any management action approached or exceeded the economic break-even point. Costs associated with appeals and court cases more and more often produced costs that exceeded benefits. Not only was multiple-use essentially dead, or at least badly wounded, long-standing concepts of "sustainability" having any relationship to predictability of resource outputs vanished.

Leg 2 — The RPA failed to provide the FS any significant leverage over the result of the outcome of the budget process. Neither the Administration (operating through the Office of Management and Budget) nor the Appropriations Committees in the House and Senate proved willing to accept the "guidance" or embrace the "opportunities" that emerged from RPA assessments.

Leg 3 — The NFMA also failed to achieve its objectives. The public could not be persuaded that even-aged timber management (*i.e.,* clear-cutting) was an acceptable broad-scale practice. And, the national forest by national forest planning took much longer than anticipated and cost much more than forecast. Further, the process—which was assumed would engender public trust and bring about consensus—instead produced polarization and increased questioning of the agency's motivations. In fact, the agonizing process that evolved gave birth to a new industry—the conflict industry. That new industry, composed of coalitions of hard-core environmentalists and extracting industries, has been succored on the controversy. The conflict industry has prospered on a diet of conflict, division, and consternation.

I do not believe that any single national forest plan has been executed as planned. Why? New information came to bear faster than the process could absorb it. Abrupt alterations in land management plans were required when species were declared to be threatened or endangered, and which, in turn, forced the formulation of recovery plans by the regulatory agency(s) that were imposed over the top of extant plans.

This placed regulatory agencies such as the Fish and Wildlife Service and the National Marine Fisheries Service in the position of developing "recovery plans" for species for which they declared to be threatened or endangered—two authorities that seem to have enormous power over public land management. Further, they have veto power over management action proposed by land management agencies within areas determined, by them, to be critical habitat and/or not in keeping with a recovery plan. And, there has been—and likely will continue to be—a continuous

drumbeat of new additions to the list of those species of plants and animals determined by the regulatory agencies to be threatened or endangered. With each addition of such species that occur on national forests, there is a resultant change of plans—oftentimes, dramatic changes.

Added to this ongoing turmoil is the continued failure of budgets to match the required actions spelled out in the plans in either their original or evolved forms. The overall result has been plans that change yearly and are so executed to comply with changing budgets without altered analysis. After a few years of such changes, there is quite commonly no longer any semblance of agreement between the original land-use plans and on-going activities.

The regulations issued pursuant to the NFMA which, early on, were demonstrated to be seriously flawed in terms of both technical capability of achievement and budgets required for execution, have remained in place for nearly 30 years despite repeated and very expensive attempts at increasingly needed revisions. The planning regulations, which were originally intended to be frequently and rather effortlessly amended to reflect increased scientific understanding and experience under the concept of "adaptive management," have evolved into a political icon.

New regulations, based on recommendations of a committee of scientists, emerged at the end of the Clinton era and were immediately rolled back for further consideration by the incoming Bush Administration. The basic sticking point continues to be that the regulations—both the old and those just pulled back for more assessment—likely stretch the mandate implied in the authorizing legislation.

The new regulations contain requirements that are, in my opinion, either technically impossible to achieve or so expensive that they would never be funded. The philosophy in their development seems to have become one of "require it and they will fund" rather than face cessation of management activities. That did not happen. As another Chief Emeritus observed, "The FS needed a life jacket and they were handed an anvil." It is critical, if any production of resources is expected from the national forests, that the regulations be more flexible. And, clearly, development of policy is best left to the Administration and legislation is best left to the Legislative Branch. Such have no place in regulations.

A NEW ROUND OF FOREST PLANNING

Yet, the FS is now embarked on a new round of planning—national forest by national forest—while the question of new planning regulation remains "up in the air." It seems unlikely that, after spending additional billions of dollars and expending hundreds of thousands of hours of the time of planners, interested publics, and the conflict industry that much will change. It is well, at this point, to consider this definition of insanity: "Insanity can be defined as doing the same thing over and over and expecting to get a different result." That, I think, is both true and something to be avoided. If the new round of forest planning proceeds, and no changes are made, there is no reason to expect a different outcome in terms of an active management program. That could be called insanity.

The problems described so far are magnified by the simultaneous application of other laws—most notably the National Environmental Policy Act "which, in its present highly evolved form, adds greatly to the burden and costs of producing voluminous, highly technical, and complex "bullet proof" assessments (I don't think that is what Congress had in mind). The Endangered Species Act (ESA), outside of bringing additional agencies into the land management equation, is actually less of a problem. The regulations (both current and those proposed by the Clinton Administration) issued pursuant to the NFMA are even more demanding than the ESA in requiring the maintenance of "viable populations of all native and desirable non-native species well-distributed within the planning area." It doesn't get any more demanding than that. Remember, the Court's shutdown of timber cutting on Federal lands in the Pacific Northwest was predicated on non-compliance with the FS's planning regulations, not on violations of the ESA.

POSSIBLE WAYS OUT OF THE IMPASSE—A PUBLIC LAND LAW REVIEW

I think there may be three possible ways out of the current impasse. First, the concept of a Public Land Law Review Commission could be brought out of limbo and dusted off. The last effort, in 1969, was directed by a collection of big names that, basically, came up with nothing except the conclusion that things were badly screwed up. And, that, I remind you, was before the onslaught of environmental legislation of the 1970's.

OPTION 1

But, now that federal land management is dramatically and even more seriously convoluted and becoming increasingly dysfunctional, it may be time to try that idea again. But, this time, the Commission should be composed of top level experienced

natural resources professionals and legal assistants with the mission—to be accomplished within a time certain—of producing a report in the form of alternative legislative packages to be presented to Congress and the Administration for consideration and possible action. Uncoordinated piecemeal amendments of individual pieces of applicable legislation, if that were even possible, will likely produce even more confusion.

But, likely, neither the Congress nor the Administration has the stomach for a new Public Land Law Review Commission. Why? Examine the purpose of each of the laws in question. Who could disagree with the purpose of any one of those laws? And, clearly, no one of the laws is the culprit. Problems of compliance with myriad laws in public land management emerges from their interactions and in the tangle of multiple agencies and their mandates and authorities involved. And, each law has its champions who have hard-won experience in using those laws to achieve their individual objectives and in the Agencies who derive their powers—and even their reasons for existence—therefrom.

POSSIBLE WAYS OUT OF THE IMPASSE—REVISION OF REGULATIONS

The "devil" is, oftentimes, in the details, or, in this case, in the regulations. Remember, the various regulations were developed by different agencies to afford them the best chance to carry out their missions as described by the authorizing laws and, simultaneously, to enhance their power and flexibility. These regulations were not promulgated with any discernable evidence of their fitting together with other regulations, or with any consideration of the impact of their enforcement on other agencies and their missions. Remember, some regulations trump other regulations and agency actions—and therein lies real bureaucratic power and power for the constituencies of those agencies.

OPTION 2

However, the Administration has authority, responsibility, and capability to revise regulations. The Administration could establish a "czar of regulations" related to public land management and task that person, and the heads of all involved agencies, to simultaneously revise agency regulations with the aim of coordination, simplification, and efficiency of public land management. This could be ordered achieved within a time certain with only the czar having authority to grant any extension of time lines.

This course of action is relatively more feasible than simultaneous revision of laws, as authority rests with one person—the President of the United States. Will it happen? Who knows? The Administration would have to think it over - and they have other things on their minds at the moment. The management of the public lands is not, at least discernibly, high on the Administration's agenda.

POSSIBLE WAYS OUT OF THE IMPASSE—COLLABORATION (OPTION 3)

The third option, to a limited degree, is for people who live in communities involving national forests and are not content with the current state of affairs to exert some level of control over their destinies. Their war cry could be taken from the old movie Network, in which the central character became fed up with the status quo and began to scream, "I'm mad as hell and I'm not going to take it anymore!" Others took up the cry.

Being angry and feeling powerless make a bad combination that is hard on both digestive tracts and the human spirit. It is a mood that no vibrant community can endure for long without some deterioration. But, such can—if appropriately channeled—provide stimulus to reach out to others in the hope of producing something better.

Barring the revision of laws and/or regulations—which simply "ain't gonna happen" anytime soon—there is another approach to the public land management impasse that shows promise. That approach involves releasing fists into open hands and extending those hands to join with another and another and, then, yet another.

That reaching out takes place within is what some call a "community of place" which involves a defined landscape and the people therein. The place will be made up of many land classifications and ownerships (in this discussion, National Forests and what happens in those forests are of primary significance). The people in that community will share several things in common. First, they live there. Second, the place is, at least emotionally and spiritually, more theirs than those who live far away.

HANGING TOGETHER OR SEPARATELY

Benjamin Franklin's observation, made on the occasion of the signing of the Declaration of Independence, has some applicability in this discussion. "We must all hang together, or assuredly, we shall all hang separately." Our communities prosper

and suffer collectively. No one person can remain untouched by significant actions that touch his or her community(s) at large.

PLANNING BEGINS—INVOLVEMENT OF FS PERSONNEL

Personnel of the National Forest system are beginning a new round of planning to guide management for the next decade. Believe me, most FS folks are as distressed at the current state of affairs as other members of the community. They are good and dedicated civil servants "the vast majority are good and caring people—charged with the care and tending of a most remarkable legacy of land that resides in the ownership of all the people of the United States. Most signed up to be part of something bigger than any individual. They truly want to "Care for the Land and Serve People." And, significantly, they know that word has come down from their current and past two Chiefs that "collaboration" with communities of interest shows promise and deserves support. They, by definition, are critical components of the communities where they live and work. And, they want to be part of and partners in those communities.

THE FOREST SERVICE AS FACILITATOR

I hope, and think, that in this round of planning FS professionals will serve more as facilitators of the process than as purveyors of predetermined courses of action. Such will be something of a new approach and, quite likely, a bit "messier" than that which has gone before—but with more acceptable results.

I hope the process will be much less drawn out than last time around. If the process draws out too long, most of the initial participants will drop out and leave the playing field to a few dedicated individuals. Most of those present toward at the end of the struggle are either truly committed with time and patience aplenty or zealots or "hired guns" from the ranks of the conflict industry.

UNSPOKEN RULES OF THE FOREST PLANNING GAME

Two facts essential to our consideration are: "Decisions are made by those who show up" and "In a democracy, outcomes are determined by the majority of the minority who cares deeply about the issue in question." We see sound wisdom here.

Knowing this, old hands in the game, particularly those who have roots in the conflict industry, come to the game both experienced and well prepared. They know that the longer the process drags out, the more voluminous and less intelligible the written assessments become, the more revisions made, the more complex the process, the more likely that the playing field will be left at the critical culmination to the zealots and hired guns.

The lesson to be learned is this: set reasonable, but firm, deadlines. Do good thorough work based on experience from the last go-around in planning. Meet the deadlines and do not grant extensions except for the most valid of reasons. Routine granting of extensions and requests for more and more assessment and more and more review and extended opportunities for public comment may seem an easy means of political mollification. Such is not the case. Extensions are expensive in both time and money and in the public's confidence in the process. And, delay rarely makes much difference in either knowledge gained or the conclusions reached. If the desire is to turn the process—and ultimately the end result—over to the folks from the conflict industry all that is required is to allow the process to drag out.

In the end, it may be desirable to have the outcome of your collaborative efforts blessed in law. There are precedents for such actions—even involving required budgets. At the very least, the blessings of political leaders are helpful, for, as Former Speaker of the House Tip O'Neil observed, "all things are political and all politics are local." That too is sound wisdom.

AND, WHY SHOULD THINGS BE DIFFERENT THIS TIME?

Why might this go-around with forest planning be different that the last? Because things have changed and, I don't believe, there is any going back. Twenty years ago, there was a pitched battle going on between warriors of the environmental persuasion and the old-line extractors of natural resources over the future of public lands in the West. The environmental warriors won, capitalizing on the spate of environmental laws passed in the 1970s, the collapse of timber extraction during the Reagan/Bush administration, and the eight years of a Clinton/Gore Administration sympatico to their environmental constituencies.

Fierce in battle, many of the eco-warriors have been unable to come to grips with the consequences of victory and are now reduced to wandering about the old battlefields bayoneting the wounded. Their counterparts from the resource extraction community, likewise, cannot come to terms with defeat and hold "ghost dances" to bring back the good old days when they were undisputed Kings of the West.

In the meantime, other things changed. The population in countries near the national forests of the West have grown at twice the national rate and has not become philosophically in synchronization with the old days and old ways. The economic opportunities so dramatically exploited by the newcomers were not based on resource extraction and secondary manufacture but on other sources of jobs and economic opportunities. In addition, many of these newcomers were attracted by the aesthetics of the West, its quality of life, and its inherent life style.

The "old west," and its component land management and regulatory agencies reluctantly moved into the new age nudged by one court loss after another for failure to comply with the environmental laws of the 60s and 70s. The people whose ways of life were changing, and not by their choice, were moved to resistance—sometimes quite dramatically expressed. These acts of resistance made the news—for a few days—but changed nothing. They demonstrated, blustered and threatened, but frightened very few and not for very long.

In the aftermath of victory by "the greens" and the public acceptance of change that was wrought, it is past time for a "Marshall Plan," wherein the victors realize that the best means of maintaining their gains is by fostering a new spirit of cooperation, an appreciation of the desirable aspects of western culture, and the development of an institution of a "just peace." The general body politic is wearying of the continued bayonetting of the wounded. They, increasingly, hunger for a just peace. Some scholars believe that this can only be achieved by stepping back from the "one size fits all" approach. Over the long haul fostering "local" or regional solutions to suit local or regional conditions—economic, social, and ecological—is likely best. Many politicians, perhaps in desperation, agree that this is an acceptable and needed change.

And, with the disaster of September 11th, a new national mood is apt to persist to some degree for some time into the future. That mood is one of national unity with a focus on the general welfare and a renewed trust of government and its institutions. For example, within ten days of that event, the President of the Sierra Club announced a change in strategy away from personal attacks and inflammatory rhetoric. Part of that statement was "Now is the time for rallying together as a nation; the public will judge very harshly any groups whom they view as violating the need for unity.

Just maybe, there has been a change in attitude that requires more gentility, courtesy, and respect in the process of making decisions in land-use planning and management.

Over the past decade, the Forest Service has moved progressively, toward a new management paradigm known as "ecosystem management." In that approach there are several underlying principles: broader and more appropriate scales of landscapes considered; the inclusion of more variables including ecological, economic, legal, and social; and the full consideration of people's needs and desires. Implicit in that approach is the concept of collaboration within appropriate communities of interest.

This round of forest planning is the best extant chance to take a step—even a baby step—in that direction. I say, seize the opportunity.

COMMUNITY–FRIENDLY RESULTS? IT'S UP TO YOU

I believe the results from these renewed planning efforts can be more, much more, community compatible" or "community friendly" than what emerged in the last go-around. The key to that result is the effective participation of the community itself.

Those involved must unclench their fists, make them into open hands. Extend those hands to your neighbors. Reflect on the symbolism—open hand, open mind, open heart. In that simple gesture lies the best extant opportunity to bolster the well being of involved communities.

Perhaps now, after two decades of acrimony and frustration, weakened and fractured communities are ready to heed the age-old plea made in the throes of discord— Come, let us reason together." That recurrent refrain, without doubt, is the best wisdom of all.

Will that insure success? Perhaps. Perhaps not. It is well to reflect on a line often quoted by General George Washington during the American Revolution when was torn between possibilities of success and defeat, "We cannot assure success, but we can deserve it.

Mr. PETERSON. Thank you, Chief Thomas. Tell me if my perception is wrong. It appears to me, and I have been involved with local government—State government and now Washington— but I have never seen an agency so beset with appeals and lawsuits. I mean,

it seems like no matter what you do, somebody is suing you on one side or the other.

Is there greater ability to sue in the layer of law and regulation you are living with than most other agencies? Is there an expanded access to the courts here?

Mr. BOSWORTH. I will take the first shot at this. There are some differences between our agency and some of the others regarding that. One, for example, is that, I believe, we are the only agency that has a legislated appeal process.

Now, that doesn't answer the litigation side of it. But, with that appeal process, we have some very long-term kinds of steps that we have to go through.

So there is a tendency, then, for some people that feel like if they can delay a project, then they will in the end have been successful, because the project may not go forward if it is delayed or there may be new information to be considered or whatever.

So it does make us a little more vulnerable, I think, to those kinds of—people with those kinds of motives.

Mr. PETERSON. Well, I was involved in an endangered species suit that stopped some action on the Allegheny Forest. When I sat down with Fish and Wildlife Service, their biologist said that in her opinion, 75 to 80 percent of the suits that were brought had nothing to do with the endangered species but was to stop some action on the forest that their group didn't want to happen. So they used the breadth and depth of the Endangered Species Act to sue, which stopped everything.

Do you think that is an accurate description? This was a person who has to write the biological opinion and to prove your plan in the end. And that was just her comment to me. And she wasn't taking sides; she just said, "75 to 80 percent of the suits I deal with are not about the endangered species." .

Mr. BOSWORTH. I don't know if that is accurate or not accurate. It is hard for me to say why somebody might be appealing or filing a lawsuit. And I know that there are people out there that have a strong concern for those endangered species. We have a strong concern for those endangered species. So I don't want to sit here and try to imply that people's motives are not honorable, although I do believe that some of the appeals that we get and some of the litigation that we get, siting endangered species, that that may be our Achilles heel in terms of the project itself. And somebody might feel like they have the best chance of winning by appealing or litigating over endangered species.

But, again, I don't really want to try to imply that people's intentions aren't honorable that are setting out to ask to have our decisions reviewed.

Mr. PETERSON. Well, any area of our life that gets too complicated with the law and lawsuits, I mean it just goes downhill—whether it is health care, people die, we litigate in the courts. The courts are not a timely process.

Jack, would you have a comment on it?

Mr. THOMAS. I don't think it is a matter of reflecting on anybody's honor. It is if you have an objective in mind and you sit down with an attorney, and my objective is such and such, the at-

torney comes forward and says OK, here are our options of going forward to achieve that objective.

So I am not even sure that there is any honor involved. It is a matter of saying it could be that, no, I don't want that action to take place; and I go to my attorney and I say, how would I go about this under the law? And he will bring forth—if he is a good attorney, he will bring forth every mechanism under the law that is applicable to the case and exercise it. That is just the way the game is played.

Mr. PETERSON. But I don't know of another government agency—I have been in government 30-some years, plus business, 26 years. I don't know of another agency that deals with the legal maneuvers that you deal with, I mean, on a regular basis. Everything you do, somebody is suing you on either side, it seems to me to me like.

Mr. THOMAS. Well, a large part of that has to do with the land base and the fact that we are an active management agency. We do things and it changes things. And if we don't do something, it has an effect. If we do something, it has an effect. And we control an enormous amount of very high-quality land. Why would you want to sue somebody over 50,000 acres of desert? Though that sometimes happens. We get as much or more recreational use than the National Parks Service, beautiful wonderful country. It is in multiple use. We have had grazing for a long time. We have had timber production. We have got incredible wildlife habitats.

Now, one of the things to keep in mind, the Forest Service has a huge proportion, or a large proportion, of threatened species. That is not because they did a bad job. That is because that is where the good habitat is. That is, in many cases, because of the way it has been treated and preserved. So I think those things add up to make it vulnerable.

Mr. PETERSON. I guess I am out of time. Ranking Member Mr. Inslee for 5 minutes of questions.

Mr. INSLEE. Thank you, gentlemen. I am sorry I was late to hear your testimony. I want to thank Mr. Thomas for your previous great service to the country. I know that the gentleman next to you hopes that he can be—and some days is looking forward to emeritus status someday as well, I am sure.

Mr. THOMAS. He kept his house in my hometown.

Mr. INSLEE. We would like to make those days fewer than greater, I suppose. This subject, you know, is just ripe for philosophical decision for days and hours and hours.

But let me just ask you a general question. Do you think the existence of the multiple environmental laws that have been enacted, the ESA, NEPA, even though they have caused substantial debate, concern, litigation as a whole, have enhanced the functioning and value of those public lands? That is just a general question.

Mr. BOSWORTH. First I would say that I think that, individually, the environmental laws are very good and have done a lot to help preserve the high-quality environment. The difficulty gets, really in my opinion, more into the regulations and the implementation of those environmental laws and the interaction and the redundancies. And to me, it is as much as an effectiveness or an efficiency aspect, the huge amount of time and dollars that go into process so that so little comes out at the end, that in some cases

doesn't add very much value to the decisions, but just takes a lot of time.

So I don't have—so I don't look at any of these laws individually and say these are bad laws. I think they are good laws.

Mr. INSLEE. Mr. Thomas.

Mr. THOMAS. I would concur. I said that in my testimony. When I look at each one of those laws individually, I can't see a single one of them that I would want to throw out. I think we merely need to regroup now and say, how do we get from A to B in a bit more efficient manner. We have had our focus on these things. We have learned a lot about these things. One of them that I think would be very helpful—and I remember saying this in front of President Clinton at his forest summit in Portland a long time ago, and I was not the Chief— and I said, any way you cut it, biodiversity and its maintenance and retention has become the overriding objective of the national forest management.

I would prefer that if you meant that to be true, that you say so; or if you didn't mean it to be true, that you should say so. As a biologist, I can see that as an admirable goal. As somebody that tried to give some guidance to the Forest Service, I found it extremely frustrating when it was very obvious, the way things were coming down, at the same time our production of goods and services was declining and certain folks in Congress were beating the living hell out of us on a continuing basis because of that.

Now that I am out, I can say these sorts of things. You guys have done a lousy job of telling the Forest Service what is it you expect from them. Some Congressmen expect this, some Congressmen expect that. But it has never been made clear you really buy that; that that much attention and that much risk avoidance related to the preservation of diversity at the consequent cost in the production of goods and services is an OK thing.

If it is, you should say that. If it isn't, you should say, no, we expect some level of production of goods and services in keeping with that sensitivity. But right now they are just in a knot.

Mr. INSLEE. Well, we appreciate that assessment that we have done a lousy job. We just hope Mr. Bosworth doesn't pick up on that right away in his description. But he will be free to use that language someday, just maybe not today.

Mr. THOMAS. It is my turn now.

Mr. INSLEE. Just one more shot.

Mr. Bosworth, there is a proposal to essentially ask the Under Secretary to make a ruling on—I am trying to recall where it is. It the Bitterroot surplus issue, that would essentially, as I understand it, ask the Under Secretary to make a ruling which would thereby eliminate the public appeals process. Are you familiar with what I am—.

Mr. BOSWORTH. Yes.

Mr. INSLEE. Are you concerned that that sets a precedent or generally would do an end run around the appeals service? Is that something where you think we need efficiency, or should some of us be concerned about short-circuiting that appeal route that is now available if the Service made the decision rather than the Under Secretary?

Mr. BOSWORTH. Well, first, it isn't without precedent. It has been done a few times in the past that I am aware of, and maybe many times. But let me just explain the situation a little bit and why I sent a letter to the Under Secretary asking him to do that. We had the fires of 2000. It has been over a year since the fires were out. We spent a lot of time and a lot of money doing the environmental analysis and coming up with a final environmental impact statement for restoration and some salvage. And we are in a situation where it is very clear, from both letters and discussions, that it will be litigated. And it makes sense, with the urgency of getting on with the restoration work, it makes sense to me to move forward and move right on into court.

I wouldn't suggest that very often. But I think in a large project like this, where there has been a huge number of public meetings, there has been a huge amount of public comment, lots and lots of analysis, lots of work with people, and, again, a fairly urgent sense of urgency to get on with that project or there will be no value left, and we go through another winter and spring without having some of the restoration work done, as far as—obliterating roads and replacing some culverts with larger culverts and some of those kind of things.

We need to get on with it. And that 4- or 5-month period to go through the appeals doesn't seem like it is going to add value in the final analysis.

Mr. INSLEE. Mr. Chairman, just a follow-up. Couldn't you allow an emergency action to go forward even though the appeals follow the action? Don't you have that flexibility? Have you considered using that instead of just doing away with the appeals totally?

Mr. BOSWORTH. We do have—in fact, the regional forester had requested an exemption from stay. And after I looked at the merits of the exemption from stay—that was for just a portion of the project—I determined in my judgment that we should go ahead and just ask the Under Secretary to do this; not go through the litigation first on an exemption from stay, because that would be litigated.

We are told that if we give an exemption from stay, we go to court on that. Then we go to court on the merits of the project all by itself.

What I am trying to do on this project is to limit the delay, the time it is going to take to get on with it. And my view, again, is that if we are going to go to court, let's get to court and do that, rather than going through costly lengthy kinds of processes.

Just an example of another decision made, the choice on the Northwest Forest Plan, you know, when the Northwest Forest Plan—the decision there was signed, which normally may be signed by a regional forester, that was signed by President Clinton for the same kind of reason. It was time sensitive.

Mr. INSLEE. Thank you.

Mr. PETERSON. Chief Bosworth, tell us about the current situation on the Black Hills National Forest and how that fits into this conversation and the forest plan there.

Mr. BOSWORTH. In terms of the appeals, in terms of the project on the Bitterroot and how that compares with the Black Hills, or are you talking about the forest plan? I am not—.

Mr. PETERSON. The forest plan itself.

Mr. BOSWORTH. Well, OK. You know, the Black Hills forest plan has been in progress for a long time. When I get into the discussions about analysis paralysis, to me, the Black Hills is a good example of a process that has taken us about 10 years now to do a 15-year forest plan. I mean, does that make sense? That we would spend 10 years developing a 15-year forest plan?

We have examples in the Tongass Forest in Alaska where we have spent that same length of time. We have gone through appeals and the litigation on those, and when we go through those appeals—let's see, we haven't been litigated on the Black Hills, but they come through the appeals, and that again adds on some more time. So we could be—probably by the time we complete all of the work on the Black Hills, it will probably have been—maybe 11, 12, 13 years will have gone by trying to complete a 15-year forest plan.

Mr. PETERSON. On health care, there would be a lot of dead people by the time we had solved the problem. I guess it just amazes me the appeals and lawsuits that you have to deal with. I don't know how you do anything.

I mean, I don't know how you get to—because we certainly have some diverse opinions in the country, and it doesn't seem like the interest groups can get together and find common ground. It is like we are going to use every—have the interest groups in this field just learned how to maximize the use of the legal system to stop things? I mean, you could stop every building project if everybody decided to sue. You could stop almost anything if everybody decided to use the courts, because you could—with—somebody with lots of money and access to often free lawyers, I mean, you—.

Mr. BOSWORTH. Well, let me just say a couple things on that.

First, the lawsuits that we get and the appeals that we get in the Forest Service are largely—on our projects are largely, again, debating national policy. There are differences of opinion about the implementing of national policy, but they are done at the local level; and so this whole issue of why do we get so many appeals and so much litigation, I think is really again, at the local level, wanting to argue about whether national policy is right or not. The district ranger of the Forest Service is merely trying to implement that national policy, but then it gets debated again at each project. So I think that is part of it.

I think another part might be the fact that we are a multiple-use agency, and we haven't—we haven't been able to—I mean, there are lots of different desires for these very, very valuable lands. Maybe an answer, in my view, is, we are working hard to try to collaborate, particularly at the community and local level, in trying to get people to come to the table. But there are lots of incentives; there are disincentives, I guess I would say, for not coming to the table.

If you have a particular viewpoint and you don't have to sit down and collaborate and work with people because you can get what you want through litigation or through appeals, then there is no reason for people to come to the table to try to solve the problem.

Mr. PETERSON. That's right.

Mr. BOSWORTH. And we need to get people to the table. We need to find the common ground with people so that we can move for-

ward, and we will probably never get total consensus on national policy with national forestlands or on individual projects, but we should be able to bring a lot of people together and develop at least some level of consensus. But it won't happen if there is no incentive to come to the table and to work.

Mr. PETERSON. Chief Thomas, you testified that you thought the United States Forest Service could issue regulations. You talked about the layers of regulations, regulations that don't mesh, and it would take a bold step.

But could—in your opinion, looking back, could you have issued—had your people write regulations that made things work better? They wouldn't have been without controversy, but—.

Mr. THOMAS. I am certain that we could, but it wouldn't have solved everything, because it would have only been the regulations in the Forest Service. But one of them, for example, just as an instance—and I will tell you where it came from.

Early on in the planning process, a plan came in from the Wallowa-Whitman National Forest, and they landed, I believe, on lynx, and they had never seen one there. So they turned around and said, we will take care of that up in the wilderness. So internal Forest Service staff suggested a clause that would get across the point of what planning would be about, and they wrote this down. It says, the objective is viable populations of all native and desirable nonnative berms, well distributed within the planning area.

At that time viability didn't have the same meaning in science that it has today, and they merely told—meant to tell them to think about it. That is more constraining than the Endangered Species Act. In fact, the entire issue in the Pacific Northwest that blew up all over spotted owls was on that clause, not on the Endangered Species Act. The subspecies wasn't listed until after that had been done. So something that made a lot of sense as an instruction has turned out to be an incredible drawback to rational thought.

Mr. PETERSON. What I would say to an administrator, if you regulated it, why didn't you unregulate it? Why didn't you change the regulations or propose a change?

Mr. THOMAS. I think it was proposed about—I would hate to guess how many times we tried to revise the regulations.

The idea in adapting management is, you try something. You learn, and you fix it and make it better. I don't know how long it is been, but it has got to be close to 25 or 30 years that we have been unable to revise those regulations. Every time we get ready, we would have a new set of regulations ready to come out. If it was a midterm election, the administration would say, hold it; we really don't want to stir that up right now before the election.

And then people get elected and some win, some lose, and the power shifts, uh-oh, well, I don't like the people and folks don't like the new regulations; do it again.

You do it again, you get ready to go, and you have a Presidential election; and somebody wins that figured they were going to lose, or loses that figured they were going to win, and then suddenly they don't like those regulations. This has happened five, six times. We have still been unable.

Finally, last time, they got new regulations out right at the end of the Clinton administration, and the Bush administration rolled

them back. So we are about where we were 25 or 30 years ago. Those regulations—this idea that we would be able to learn quickly and adjust the regulations has proven to be a myth. It is almost impossible to achieve.

Mr. PETERSON. I recognize Mr. Holt from New Jersey for 5 minutes.

Mr. HOLT. Thank you, Mr. Chairman.

And, gentlemen, thank you both for your testimony.

I guess the fundamental question we have to get to is whether there should be a change in—a legislative change. Words that often are associated with the Forest Service are "gridlock," "litigation."

Dr. Thomas, you have said that management activities are, quote, "increasingly expensive, uncertain, unpredictable, contentious and unwieldy." and yet it—I think I hear you say that you are not calling for major legislative changes.

We did have—we have—Congress before my time did make an attempt at cutting through the Gordian knot to reduce judicial and administrative review through the salvage rider a half dozen years ago; and again observing this just as an outside citizen, not as a Member of Congress during that period, there did not seem to be any reduction in the uncertainty or the unpredictability, the contentiousness, the unwieldiness of the activities.

So was—you know, was this legislative effort a success? Did it reduce gridlock? What does that tell us about the need or lack of a need for major legislative action at this point?

Let me start with Dr. Thomas, please.

Mr. THOMAS. First, the salvage rider, a perfect example: The Forest Service was not brought into the loop on that. The first time I ran into it was in the under secretary's office on my way home from work, when it was being debated on the floor; and I began to scream about what that was going to cost politically. It passed overwhelmingly. It was signed. We were given our marching orders that said we didn't have to consult, but we did, and the only thing we didn't do is accept appeals.

We probably ended up salvaging less than we would have under the normal regulation, but nonetheless, halfway home on that, after being called over once a week to report on progress, somebody stuck their finger up in the air and felt the wind blowing in the other direction; and then we got the brunt of having caused that when we were not even consulted. And then we were right on target, and suddenly we changed direction.

So it didn't have anything to do with the law. That had to do with a shift in political direction.

Did I think the salvage rider was a good idea? Absolutely not. But I want to say, I am calling for legislative change. But what I want to get across is, I don't think that you can fix this piecemeal. If you adjust one law or the other, it is just going to get the balance out of whack. We need somebody to sit down very, very carefully and look at all of those things in context and come back in and say, this—you know, here are several potential alterations that would lead us out of this. It is going to—I don't think you can do it with your Committees; I think you have got too many other things to do.

The first time around, they did it with a bunch of big names who really didn't know much about it, and they ran around the country having hearings and wrote a big book and said, things are screwed up. That was in 1969. Only environmental legislation occurred in the 1970's in the subsequent court actions.

I think if there is any way out of this related to the law, it is going to have to have somebody, some folks sit down and very carefully work their way through this and come back with suggested alterations that would be simultaneous. Otherwise, I think you would just make it worse.

Mr. HOLT. Chief Bosworth?

Mr. BOSWORTH. Well, as far as—let me start with the question about the salvage rider, and I wouldn't suggest that kind of an approach. Again, what we need to do is, we need to look at this whole mass of laws that we have or mass of regulations.

Now, I haven't been advocating that we look at legislative changes, necessarily. I think that what I am really asking for is to give bipartisan support to work with the Congress to make changes in regulation. What I don't want to end up with is getting into a big fight with—having the support of one side and not the other side, and then not being able to, in the end, make any kind of improvements in the process.

As I said before, I support the environmental laws individually. I have a lot of difficulty with the amount of time that it takes to implement those, the amount of dollars it takes, often, with only a very, very small improvement in the decisions that are going to be made and the infinitesimal improvement in the decisions to be made. I believe that the bulk of that is in the regulations.

My interest is in working with the—within the Forest Service, as well as with the other agencies, like CEQ and the Fish and Wildlife Service, and looking at those implementing regulations to make sure that we can't make some changes on parts that would significantly reduce the amount of time and energy and analysis that it takes to implement them.

Now, if there are some—there may be some wisdom in looking at the—at actual legislative change, but where my focus is right now is really on the regulation.

Mr. HOLT. Thank you.

Thank you, Mr. Chairman.

Mr. PETERSON. Yes.

Chief Bosworth, while we have you here, you can lead a task force to review the July 1995 report and accumulation of numerous laws and regulations established over the last 25 years. Can you give us any status on that and when that would likely come out? And will it make regulatory proposals and legislative potential for changes, or—.

Mr. BOSWORTH. My guess is that it should be finalized here in the very near future, next—probably by the first of the year.

Mr. PETERSON. Is it broad in scope?

Mr. BOSWORTH. Well, you know, I haven't—I have got a team that is working on it, and I haven't gotten into all the details with the team yet. But they are going to present it to me, and I will take a look at it.

It has got recommendations. I have looked at parts of it. It has got recommendations that there—that we haven't accepted yet, but I am taking a look at those. It really—what it does, it takes the report that was done in 1995 and then updates it basically, and—to bring it up to speed with any of the other kinds of laws that have passed or changes that have been made since 1995.

So what I expect to have out of that is—is some recommendations, some of which may require legislative change.

Mr. PETERSON. But you—that would be the first—.

Mr. BOSWORTH. That would be what?

Mr. PETERSON. The first of the year?

Mr. BOSWORTH. Yeah. I would like to have that completed by the first of the year.

Mr. PETERSON. Mr. Thomas, you did this in 1995. Can you give some public advice to the Chief, what happened to your plan and what he should—how he should make his doable?

Mr. THOMAS. First, I give advice to the Chief only when the Chief asks for it.

Mr. PETERSON. I am asking you to give him advice.

Mr. THOMAS. No. I would say—.

Mr. PETERSON. But you could get together here. We have a team that—.

Mr. THOMAS. I would think—I don't—I don't know where they stand. I can only tell you that they—I believe it was the Senate—I don't remember—asked Mr. Glickman for this report. The Forest Service prepared the report for Mr. Glickman, gave it to him; and as far as I know, it is in a box over there somewhere.

Mr. PETERSON. File 13?

Mr. THOMAS. I don't know if it was file 13. I suspect there are some copies around somewhere, but basically that is one of the things—you know, I am sensitive to politics and how they work, but the Congress asked for the report. We prepared the report, delivered the report to the Secretary, but it was never released to the Congress. But nobody ever fussed at the Secretary; they just fussed at the Forest Service for not producing the report to Congress.

Mr. PETERSON. We, let me just interject something.

It seems to me that politics is ruling here instead of policy. I would like to go back to health care, because it is life and death; but if you politically run health care, people would die. I mean, you have to have sound science, what is good.

But ours is no different, you know, sound science, proven ways, proven methods. If politics is going to run our public land, it is going to get all mucked up. I think that is where we are at. You know, political winds blowing is where our problem is.

It is either sound science to do something or it is not. We may have groups debate that, but that is a debate, a public discussion we should have had. But I used to believe that when you had a public discussion, that what was right would win in the end. After I got to Washington, I am not so sure that is true, because the power of interest groups is so great and the resources they will spend; and so I am not sure the truth always wins, or I don't think it does back home.

Mr. THOMAS. Well, I would be happy to reply to that.

As a scientist, I was in fact the highest graded scientist that the Forest Service ever produced. I don't want you to be confused between science and politics. Science should not direct the U.S. Forest Service. The political process should. Science defines what is possible. It defines the risk, it defines the tradeoffs, but it should not define the policy. That should be for the Congress of the United States and for the administration.

For example, back to that loop when I was talking about biodiversity, I desperately wish—this is a science question. I can, you know, work with you or a number of other people can, to talk about why you ought to do this, how you ought to do that, how much risk there is involved. But, still, we have never had the Congress or the administration come down and clearly define in the political sense how important that is. It has been left to the courts to decide what is appropriate.

Now, the courts have stepped—within the last 3 months, for the first time, have stepped over and decided to legislate science. They have always deferred to the expertise of the agencies when it came to the application of science. The courts within the last 3 months have stepped over that line, and I think that there is a can of worms there that you are not going to be able to believe.

Mr. PETERSON. Thank you for your candor.

I believe, Mr. Udall, am I—or were you first?

Ms. MCCOLLUM. I was here first.

Mr. PETERSON. OK. You are next, Ms. McCollum.

No, no, Ms. McCollum is recognized. She was here first. The lady may proceed.

Ms. MCCOLLUM. Thank you, Mr. Chairman. You know, this is an interesting discussion and not unlike one that we had at the natural resources committee in Minnesota that I served on, with our forest service back home talking about, you know, what do you do with the tension, what do you do with the balance here?

And I really appreciate your comments, Mr. Thomas, because you are correct. Science can only give us indicators. It can give us guidelines. It can point directions. But it is, in a democracy, up to the people to make the decision how our shared resources are going to be used; and sometimes that is contentious, at times that does shift from election to election. But that is what makes this democracy so wonderful, and the way that we handle things appropriately is to take them to court and to do litigation.

Now, maybe there is a way that we can process things getting up to the table—talking so that we don't become so litigation-minded when it comes to these issues is something that I would like to work out with others; and I think everyone would benefit. Except for maybe some attorneys, everyone would benefit from a process of doing that; and we need to do more of that in a civil society, and I hope we can work toward that.

And even in your paper, you pointed out some of the words from the Sierra Club. We need to sit down and work in a mutual way that is more civil. And I think our courts—you know, they are so backlogged that when they have something—that is what is taking so long to make the decision. Our courts are extremely backlogged.

But I really appreciate your comments, and it kind of has held back the question that I had for you, when you said it is up to

science to give the explanations; it is up to science to point out the directions we can go, the cause and the effect of what will happen; but it is for the policymakers to make the decision.

And so I really have more of a comment now than a question, and I really thank you for your remarks.

And Mr. Chair, you know, you are right. Health care is a mess. It is a mess because people don't have access to it, because they don't have coverage, and because they have to take their insurance companies to court to get coverage. So I agree with you, health care is a mess.

Mr. HOLT. Would the gentlewoman yield?

Ms. MCCOLLUM. Yes.

Mr. HOLT. I would like to take this moment to follow up on the comment that you just dropped, Dr. Thomas, about the change in legislating science when you say the courts are now trying to legislate science.

What do you—what do you mean? And could you elaborate a little bit more on your previous comment as it really applies to the Forest Service?

Mr. THOMAS. Indirectly, the case I was speaking about has to do with the Northwest, and it had to do with salmon. All of this gets to be involved with the Forest Service, because we have most of the spawning habitat.

The Fish and Wildlife Service differentiated between two salmon stocks on the basis of whether they were hatchery-raised or whether they were wild fish. And the Fish and Wildlife Service, who theoretically had the expertise in this area, said, no, they were indeed different. And they were going through some relatively controversial management action to give the edge to the wild fish, and the judge ruled that they were the same.

That is a mind-boggling decision for a judge to make, and not arguing about that particular decision, but when you cross that line and you say, now I will sit here and I will decide what is appropriate application of science and what isn't, that is a major, major step in litigation that you won't see the end of for a while unless we get—it gets overwhelmed in the appellate court.

Mr. HOLT. Well, I thank you. And as a scientist myself, I understand the significance of what you are saying.

And I thank the gentlelady for yielding.

Mr. PETERSON. I would like to be an observer. It appeared to me that the regional directors' ability to manage their regions kind of slipped between the tenure of the two of you—I don't know whether that is—whether you agree with that or not—and things got more elevated to Washington decisions, standard policy.

Now, I think my view of the Federal Government is, we need to have the rules, but there is a huge difference in the forests across this country, they are very diverse; and a Washington management team is going to mismanage half of them, because they are different. And if they are not out there on that forest and particularly—and certainly I come from the hardwood forests in the Northeast, which certainly have no relationship to the softwood forests of the South or the West, and I guess the best government I have seen has always been closer to the people, not—not at the State capital or not in the Washington capital, but it seemed to me

we—there was a change in the Forest Service that raised more and more the decisionmaking in Washington and regional foresters had less clout.

Is that a fair assessment?

Mr. THOMAS. Mr. Chairman, I think that happened as a matter of a forced hand in the Pacific Northwest, where we suddenly could not deal with issues related to northern spotted owls, for example, that caused a revision of the entire—all of the plans in the Northwest simultaneously. That was the first huge elevation of something to a more national, or what the decision was—the work went on out there, but all of a sudden, it was a one-size-fits-all decision related to an Endangered Species Act question.

There are several more of those that have occurred. In fact, that decision for the Northwest was made by the President of the United States.

So, basically, application of some laws and some cases are forcing us to a higher level of decisionmaking operation. All of those issues in the Northwest moved very fast, and I helped with most of the teams, led most of them, and decided that we were being pushed awfully hard and awfully fast, and maybe if we had a little bit more time, we would do a better job. I now have reflected on that and decided that that is not true, because I had the authority and I turned around to Regional Forester Bosworth and Regional Forester So-and-So and I said, let's give these guys a little bit more time in the Columbia Basin. They are still not through, but sooner or later, it will emerge and they are going to have to make some regional decisions there.

So I think, in some cases, it has been caused by circumstance; in other cases—.

Mr. PETERSON. Not political policy?

Mr. THOMAS. That's right. In some circumstances, though, I do think it has been a matter of political policy.

During my tenure, you know—I don't know, maybe I was kind of odd man out. I was trying my absolute best to push money and authority down at the same time the people I was working with were pulling a lot of it up.

For example, I remember one time being ordered to finance the Quincy Library Group. There wasn't any money to do it, because I had sent all the money out to the field. And so I had thwarted my overseers, though I didn't mean to, and there was no way I could get the money together for the Quincy Library Group, except to pull it together in the region. And, of course, that set off every—every forest supervisor was smart enough to go to their Congressman, who immediately started raising hell about them taking money to go to Quincy. So I had not pulled it up to the top of holding a bunch of money, and got that consequence.

So, yeah, there is a pressure, and I think—after my time, I think there was a bit more concentration of effort at the Washington office level.

Mr. PETERSON. Well, I would agree that pushing the money decision down, but you do have to have contingency funds for—that you can use for that kind of situation. If you would—you know, looking back, it is easy to say that.

Mr. THOMAS. Let me go a little further with that.

When you have contingency funds, somebody will get them obligated for you for some political purpose; not necessarily, in my opinion, was it the best nor what the Congress intended to happen with those funds. We went in with a budget, this is what we were going to do; and I thought I ought to push the money—I thought holding a contingency fund was merely an invitation for mischief.

Mr. PETERSON. OK. But do you both agree that we need to strengthen the regions? Let me just give you a quick example.

The Pennsylvania Department of Transportation was the worst agency in State government history in the 1970's and 1980's. Dick Thornburgh was Governor; Tom Larson was the new—and he reorganized that department to where every district engineer was just a tad in power below him. They had tremendous—but the rules came out of Harrisburg. But these district engineers—and I, as someone representing a lot of counties, had three different engineers; I seldom talked to Harrisburg about anything, only once in a while about money.

In fact, the Secretary of Transportation that followed him said to me, I don't see much of you. Don't you like me? And I said, your district engineers solve my problems and get things done because they have the authority to do that now. I don't have to go to Harrisburg to the Department of Transportation.

And I think personally—and Dale, I don't know whether you would agree with that, but I think a lot of things have probably been bumped up to you already that really should have been solved in each of the regions; and if the head of the department and a government as big as this country has to solve all these individual little problems, he will never implement his plan, because they will keep him busy with busywork, solving problems that regional foresters ought to be solving and regional management ought to be handling.

That is—my view of government from my observations, is that you have to—only the biggest of decisions should come to Washington; only the—you know, but if you centralize, this quagmire will get bigger. That is just my theory. I don't know if you agree with that or not.

Mr. BOSWORTH. Yeah, I do agree. Actually, I would push it down further than the region, too. I would say that the forest supervisors/district rangers level is—working with those local folks is where we ought to be making as many decisions as we can make, and they need the flexibility to make those decisions and, again, not have to debate public policy, national policy in every one of those—when every one of those decisions is made.

They need to be working with local people, and they need to be taking into account the national constituencies, because they are national forests, after all, but the best decisions and our greatest strength has been when we get those decisions made at the local level.

Mr. PETERSON. Now I will recognize the gentleman from New Mexico, Mr. Udall.

Mr. TOM UDALL. Thank you, Mr. Chairman.

Both of you have mentioned in your remarks and in answer to questions the idea of collaborative efforts as far as the Forest Service working in local areas and with local communities that are con-

cerned about what happens on Forest Service land; and Chief Bosworth, I wrote you recently about collaborative efforts and raised the issue about, possibly, pilot projects that work on collaboration, those kinds of things, and was there a need for legislation.

And Chief Thomas, I think, also raised the issue here with Quincy Library Group, you know, how you get the money to do collaboration.

We in New Mexico and in my congressional district have one of the biggest collaborative experiments that is going on right now, which is the Valles Caldera Preserve, which is 95,000 acres of public land purchased by the Federal Government, but not managed by the Forest Service or the Park Service. The two regional people are on the board, but it is a trust that is running it. Both of you are probably somewhat familiar with it.

But then we have a group of citizens that are appointed by the President with specialties in forestry and grazing and fish and wildlife; and it is a pretty incredible preserve with 6-, 7,000 elk, great trout streams, good grazing land, wonderful forests. And the real—the real challenge for them is managing and then meeting all of these particular needs.

And so I am wondering, when I am hearing both of you talk, if there is a need for legislation to authorize pilots, not talk-down-to kinds of pilots but from the bottom up, if you see a need in a community to—where issues are conflicting around a particular forest, or several forests, to be able to say—designate it as an area where collaboration is really needed and be able to direct some resources to that area to allow the Forest Service and the other stakeholders in the community to come to the table and try to talk through these kinds of issues.

And I would be interested in what both of you would think about that.

I understand, Chief Thomas, what you are talking about, about doing it piecemeal, and we can't do this piecemeal; but it seems to me some of the way of getting through what the problems we are in, and the gridlock in many areas, is letting local people experiment—of course, having the Forest Service involved and many others involved.

But please, Chief Bosworth, why don't you start, and then we will go to the—.

Mr. BOSWORTH. Well, first, I think that the trying, experimenting with different approaches makes a lot of sense in a lot of places.

Now, I think even—even if we had some pilot projects that we are experimenting with, I think we still need to move forward with trying to solve some of the gridlock and looking through some of the regulations and making some of those kinds of changes. One of the difficulties they think our folks have in terms of collaboration has to do with the fact that when they are working with the community, when people come to the table and they actually come to an agreement—from both sides, they come to an agreement, then the Forest Service takes about 2 years to go through environmental analysis process. And then there still may be somebody that is going to appeal it, because there can always be somebody that doesn't agree in the end, and so by the time we go through the process, a lot of the local people have spent a lot of their own per-

sonal time working together and beating through a decision, or at least a proposal. When they don't—if they don't see it implemented in a reasonable period of time, they are not willing to come back to the table and take a crack at another project.

We need to find ways to be able to get through these process parts so that there is a reward for collaboration and coming to conclusion, so you can see the results of your efforts on the ground. And I think that those are the kinds of incentives that would help bring people to the table, if we could get through the processes in a reasonable period of time and if they could get through the processes in a reasonable period of time.

Mr. TOM UDALL. Chief Thomas?

Mr. THOMAS. I think the incentive also allows giving them some leeway.

Somebody was asking me about what huge changes I expected Dale to make, and I said none. This is like swimming in a pipe with the water moving really fast. You can just go backwards as hard as you want to, and you can slow up just a little slower than the current. You can swim like hell and get a little ahead of it, and you can swim a little to the left and the right, but you are in the pipe.

Now, it is hard to bring people into a collaborative process when you tell them how constrained the decision space is. I would love to see some real honest-to-God capability to do some collaboration; you know, I would love to. And Dale doesn't have to answer it, but I would love to have been able to turn around somewhere and say, I would really like to broaden this possibility out for you to collaborate and see what we get out of it rather than saying, yeah, I want you to—I want you to collaborate, but get in the pipe and go with the current. Very, very constraining.

I would love to see some chances—and I think they may not exist first in the West; it may exist some places in the East where we are not talking about connective corridors and, you know, great schemes and biodiversity and that sort of thing—of where they might have some capability to make a little sense, to turn around and say, let us pick some forests and take as many of the limitations off of them as we can and let us see what they could do. I think we might be stunned at what they could do.

But if we have got them in that pipe, a little left, a little right, a little faster, a little slower, but they are in the pipe. And so I think unless we can cut them some slack where we can be a little bit more innovative than we have been, it won't lead to much, but I would love to see it tried, where they really have a chance to do it.

Mr. TOM UDALL. Thank you very much, and for the record, the Chair of the Subcommittee on Forest and forest Health also coauthored with me, Chief Bosworth, that letter to you on the pilot projects.

Thank you, Mr. Chairman.

Mr. PETERSON. Thank you.

Jack, I want to ask you one more question. I would like the ability for you to look back; you have been there. I am sure Dale likes to hear your advice, too. He may not always agree with you, but I am sure he will sometimes.

If we don't broaden the pipe, if we don't slow the current down, if we don't get some management ability back to the Forest Service, where are we going to be in 10 years? Where is the quality of public land going to be if we stay on this course of analysis—paralysis by analysis—paralysis? Where are we going to be?

Mr. THOMAS. In one sense, probably right where we are: frustrated and talking around the situation. Or we are going to face the consequences of developing ecological situations.

I mean, no matter what the Forest Service wants to do now, we have the potential for some really interesting fire years as these things go by. But a lot of the—you get fooled; you know, you could have a whole decade and we don't have any either. It depends on the circumstances. But we have ecological processes going on.

Now, there is one great discovery that everybody forgets. Plants grow. Trees grow. Plants grow. None of these decisions are permanent decisions. We have the capability of manipulation of vegetation, of learning things, doing it different ways over time; but I think it is frightening to see some of the stuff that is developing in the West.

Now, a lot of that—those things that we said, you know, they look backwards now and say, well, you shouldn't have done fire protection and that sort of thing. Well, it made a lot more sense when we considered those trees to be trees in the warehouse that were going to be cut.

Now that we don't think that way particularly anymore, we are still going to have to make some adjustments. And we just can't step away from the situation that has developed and say, wow, that is going to be interesting to watch; we are going to be forced into some proactive management.

And I think they are doing a very excellent job now of beginning to move into that in a limited fashion. But you have got to understand, this is a long-term proposition, and they can only touch a little bit of it at a time. There is a lot of it out there.

Mr. PETERSON. Can you, Jack?

Dale, do you want to say something in closing?

Mr. BOSWORTH. Well, I guess I would just say again that I really think there are some great opportunities for us, working together, to try to find places where we can make some significant changes in this process gridlock. I think it is absolutely critical that we do it.

If we don't, we will have a demoralized organization. We will have work that is not going to get done on the ground. We will have demoralized communities who would like to collaborate with us. And unless we can find ways to get more of the dollars out on the ground in places where we can find that common ground, then I think we are just going to continue to see deteriorating ecosystems.

So, again, I thank you for the opportunity to be here and talk about this today.

Mr. THOMAS. Mr. Chairman, could I make one last comment? Could I make one last comment?

Mr. PETERSON. You certainly can.

Mr. THOMAS. Sitting to my right is one of the finest professionals that the Forest Service has produced. Give him a chance. These

folks out there are the best in the world at what they do. Give them some more—give them a chance. They are depressed because they can't seem to get anywhere.

They came to work here because they wanted to be something bigger than being an individual. They had a vision and a great, century-long tradition. And I just hope we can figure out some way to free them up to do their jobs with a little bit more innovation and with a little bit more leeway to do that. Because they are the best there are; and I spent 30 years in the Service, and I would go back and do it again, just like that, at any level.

So I hope you can cut them some slack.

Mr. PETERSON. Did any member have a final question? OK. We want to thank the witnesses—.

Mr. TOM UDALL. Mr. Chairman, could I—.

Mr. PETERSON. You certainly can. You are recognized.

Mr. TOM UDALL. Yeah. Let me just ask one final question here.

Chief, you talk—Chief Thomas, you talked about the public land law review process and how you—from reading your statement and hearing your comments, how you really wonder whether that is the way to go and whether that can break through what is happening here in terms of the—the overlap of the laws and things.

Do you—do you see—and, Chief Bosworth, I would also like your response on this.

Do you see any way that you could restrict—structure something like that, a commission where you would think that the result would be a positive one that would have the support of the environmental community, the resource users, the Forest Service and other stakeholders?

Mr. THOMAS. I don't think there are a lot of people that—there would be a number of people on both sides that didn't like the idea because, hey, if you are in the conflict industry and you know how to play this game, you don't want any changes. I mean, we spent a long time developing our skills on both sides of this issue, but my statement would be, what is there to lose?

I mean, it would be—the cost would be peanuts relatively. What have we got to lose to write people on it and let them bring it in, and you can look at it and say, yes, this makes sense or, no, it doesn't make sense. But to stand here and to continue to hammer for at least the last 20 years about this same situation, coming to the conclusion that there is nothing we can do about it, and going back and talking about it again is, why not give it a shot? It couldn't cost much.

I don't know who—they wouldn't—nobody would promise support until they saw what came out of it. Then that would be for the Congress to debate.

But to just sit here and continuously come back to the same conclusion that we have got deep, deep problems like this and saying, geez, we have got deep, deep problems. I have been through this now for about 8 years, and I think it is worth a shot. I don't think it would cost that much. I think it would—you could get the right people to do it, and I think you could do it under some reasonably tight deadlines.

Mr. BOSWORTH. I think there are a lot of different things that we ought to be looking at, all at the same time. I think the pilot idea,

I think that us working with other agencies with your support changes some of the regulations. I think looking at land law review, at the whole myriad of laws, doing many of those things at the same time, maybe out of some of those we will make some progress.

I don't really have a good idea in my mind of how you would configure a land law review, but I do believe that if we are to take something like that on, it needs to be something that is done quickly, I mean, in a short period of time, not something that takes 5 or 6 years. I believe it should be something that would have a result, back to the Congress or however it was going to be done, within a 6-month period or something like that, and not delay it.

Mr. TOM UDALL. Thank you both for your service.

And thank you, Mr. Chairman, for that—allowing me a final question.

Mr. PETERSON. I want to thank Chief Bosworth and Jack. I want to thank you both for your diligence today, your willingness to discuss those issues with you.

Chief, if we could have the—a copy of your report as soon as possible, I am sure the Chairman and I and the minority Ranking Member would love to look at it and react to it. I, as one, will offer myself to work with you and opposing sides. I mean, I think it—we have got to somehow come to some better process here; and I would be one to—be glad to work with you, with whoever else, to see if we can't get some consensus to move things forward; because I think continuing on the course we have been on is not going to serve anybody well. It is certainly not going to serve the land well and the people who want to use it.

I want to thank both of you. I want to thank the Members for their good questions, and the hearing record will be held open for 10 days for any additional questions, and they will be in writing. So then we will send them to you and ask for your responses, and that will be a part of the record.

This part of the hearing is concluded, and now we will introduce our next panel.

Due to the hour, I am going to change the rules on the second panel. I will ask you to keep your comments to 5 minutes. I know that is tough. I apologize.

But we have Nathaniel Lawrence, Senior Attorney and Director of Forestry Project, Natural Resources Defense Council; and Jim Perry, former Associate General Counsel, Natural Resources Division, office of the general counsel, USDA.

Mr. PETERSON. We will begin with Mr. Lawrence for his statement.

And welcome to both of you.

STATEMENT OF NATHANIEL LAWRENCE, SENIOR ATTORNEY AND DIRECTOR OF FORESTRY PROJECT, NATURAL RESOURCES DEFENSE COUNCIL

Mr. LAWRENCE. Good afternoon, Mr. Chairman, members of the Subcommittee. Thank you very much for the opportunity to appear and testify today.

I am going to try to provide some context for a talk about streamlining Forest Service management by focusing on the two ac-

tivities, the two management practices, that we most hear about as being unduly constrained by procedural requirements like NEPA. These are thinning, aimed at reducing fire risks, and post-fire salvage.

In summary, these are both activities, management practices, that are full of uncertainties. They have the possibility to do more harm than good, to have more harms than benefits. They need a full vetting. They need careful analysis. They need a candid assessment of their downsides, and they need to be followed by monitoring and evaluation if we are ever to learn how, if at all, to conduct them so that we do more good than harm.

These are, therefore, really poor candidates for procedural streamlining. We need procedural safeguards for these kind of activities. This doesn't mean there isn't anything we can do to expedite forest management. In particular, the Forest Service can focus thinning, especially in areas that are least controversial, and through practice, methods that are least controversial. And it can also use the existing authority under NEPA to use that process as an umbrella for other processes so that it avoids redundant processes.

Congress can help this as well by providing the funding that the agency needs—resources expeditiously to comply with existing procedures, which after all apply to most Federal agencies, not just the Forest Service. And also to urge the agency, to insist the agency focus on noncontroversial areas and treat things like thinning as the experiment they are and not as routine, well-understood predictable activities that we can simply jump into without looking before we leap.

Let me start by saying a little something about how experimental thinning for fire risk reduction is. There are virtually no peer-reviewed, empirically based research studies that show, after thinning, a reduction in fire intensity. It is just—this is just not there.

There are a bunch of studies—they are far from conclusive—that show increases in fire intensity after thinning; they are cited in my written testimony. Again, they don't settle the issue, and I am not suggesting that the issue is easy to settle, but they show how controversial this is and how scientifically uncertain this practice is.

There is anecdotal evidence, of course, both ways. The timber industry could take you out and show you thin stands that burnt more coolly after they were thinned, and others can take you out and show you stands that were thinned and then subsequently burned very hot. I think this raises a natural question of how you could have hotter fires after thinning, because if you are taking wood out of a fireplace, you know, you get a lower flame.

Well, there are a number of things that thinning does that it can aggravate fire intensity, and I want to just very briefly touch on them.

First, thinning opens up forest stands to wind and to sun, both of which dry out the forest interior and make it more flammable.

Second, thinning leaves behind the small branches and needles and brush and shrubs and saplings that are the most flammable component of the forest. Normally it leaves behind—it is very difficult to get those out when you do logging.

Third, it opens up the forest to flammable, brushy in-growth that makes the area more flammable later on. It also compacts—if it uses heavy equipment, it compacts soil so that water runs off instead of infiltrating to the ground and moistening the forest.

And last, it imports diseases and insects that damage forest health.

One reason that thinning is unpredictable is that when we thin forests to reduce fire, we are trying to recreate historical conditions that are really not very well understood. They are—these are conditions that—there is a lot of controversy about the intensity of past fires. There is scientific controversy about the density of past forests.

We don't really understand the conditions that we are trying to understand. We do know that they varied across the landscape very much, with microsite conditions, and that if you are going to conduct them in ways that are going to mimic past conditions, you really need to look on a case-by-case basis and look very carefully at what you were doing.

I am going to jump over, because I see my yellow light is up, to say that it is important for you to consider when you are—when you are thinking about streamlining, that the problems on national forests that are often pointed to as calling for urgent action are problems that result from many decades of Forest Service decisionmaking, most of it done without benefit of the procedural safeguards that we have today.

As long ago as 1930, the Forest Service knew that fire supression, for example, aggravated subsequent fire intensity, that caused problems when we had later fires. If we had had an environmental review at the time, the adverse consequences of that practice and other practices that aggravate fire intensity, like logging and grazing, could have been factored into the decisionmaking, and we might well not have the problems we do have today.

I think there are lots of things that the Forest Service can do to expedite its management without running undue risks, and can focus in places where there is a good chance that it can do more harm than good. And first of all, the agency really needs to focus its work in the immediate urban and wildland interface, where drastic thinning, the kind of thinning that doesn't really leave a forest behind, really does make it very difficult for structures to burn up. We really can come close to fireproofing communities if we do an adequate job of focusing in the immediate vicinity of structures.

When that work is done, there is a wealth of activity, a wealth of management activity, thinning that can be done in the previously managed and logged and eroded landscape, focusing on the small trees that have grown in since fire regimes were disturbed, rather than on the medium- and large-size trees that are the normal object of commercial logging.

I will hold the balance of my comments here for your questions. Thank you.

[The prepared statement of Mr. Lawrence follows:]

Statement of Nathaniel Lawrence, Natural Resources Defense Council

Good afternoon Mr. Chairman and members of the subcommittee. Thank you for the invitation to appear and testify today. I am going to focus my remarks on two national forest management practices that Congress sometimes hears characterized as unduly delayed by existing laws and regulations, particularly procedural requirements like those of the National Environmental Policy Act (NEPA). These practices are thinning for fire risk reduction and post-fire salvage logging. Both practices are full of uncertainties and each has the potential, at least, to do more harm than good. Both need thorough review of site-specific factors and candid assessment of their downside risks on a case-by-case basis. Both need very careful monitoring and long-term evaluation if we are not to remain ignorant of how, if at all, to keep them from backfiring.

In general, therefore, these activities are not good candidates for procedural streamlining, let alone exemption from existing laws and regulations. This does not mean, however, that there is no room for improvement in how they are conducted. The Forest Service can expedite thinning projects, in particular, by focusing on the least controversial areas and practices. Congress can help by insisting that the agency devote its resources to the immediate vicinity of communities, where potential benefits from fire risk reduction are greatest and risks to residual natural values generally lowest. Congress can also assist by ensuring that the Forest Service and its sister agencies have the staff and resources to comply fully and swiftly with existing procedural safeguards, and a mandate to conduct thinning as an experiment that must be carefully designed, monitored, and evaluated for its actual results and impacts. And Congress can encourage the Forest Service, to the extent that it identifies redundant processes, to combine them under the general umbrella of NEPA review.

Forest Thinning and Environmental Review

I will turn first to forest thinning aimed at reducing fire risks. There is surprisingly little scientific information about how thinning actually affects overall fire risk in national forests. Because of this, thinning projects need very careful design, location, execution, monitoring, and evaluation.

Most importantly, virtually no peer-reviewed, empirical studies show that thinning forests in fact leads to a systematic reduction of subsequent fire intensity.[1] The Forest Service's Cohesive Strategy acknowledges this, noting that "[a]t landscape scales, the effectiveness of treatments in improving watershed conditions has not been well documented."[2] And a series of studies—though certainly not definitive—shows post-thinning increases in fire intensity and/or spread.[3] Anecdotal cases

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[1] There are numerous models and assessments that predict what future fire intensity might be, but they do not report the actual near or long-range results of thinning as conducted under real world conditions. Similarly common are studies that look at occurrence and acreage of fire without considering intensity. However, thinning does not aim to reduce burning overall, indeed lack of low-intensity burning is seen as part of the problem with national forests. Rather, the postulated function of thinning is to make fires less intense. Thus, studies that ignore intensity do not provide useful information about the effectiveness of thinning. One masters degree thesis appears to provide a lone exception to this dearth of relevant research. Pollet, J., and Omi, P.N. 1999. Effect of thinning and prescribed burning on wildfire severity in ponderosa pine forests. Paper presented at the JFSC Fire Conference, "Crossing the Millennium: Integrating Spatial Technologies and Ecological Principles for a New Age in Fire Management." Boise, Idaho.

[2] U.S. Forest Service. 2000b. Protecting People and Sustaining Resources in Fire–Adapted Ecosystems: A Cohesive Strategy. Oct. 13, 2000.

[3] Many of these studies were reviewed by the Forest Service in connection with the Final Environmental Impact Statement for the Roadless Areas Conservation Rule (FEIS). The fire specialist review of scientific literature for the FEIS summarizes their findings. See FEIS, Fuel Management and Fire Suppression Specialist's Report, http://www.roadless.fs.fed.us/documents/feis/specrep/xfire__spec__rpt.pdf at 22 (The Congressional Research Service noted: "timber harvesting does remove fuel, but it is unclear whether this fuel removal is significant; " "Covington (1996) notes that, "scientific data to support such management actions [either a hand's off approach or the use of timber harvesting] are inadequate " (brackets in the source)); id. at 22–23 ("Kolb and others (1994)conclude that management activities to improve forest health [such as fuel management] are difficult to apply in the field" (brackets in the source)); id. at 21 ("Fahnstock's (1968) study of precommercial thinning found that timber stands thinned to a 12 feet by 12 feet spacing commonly produced fuels that "rate high in rate of spread and resistance to control for at least 5 years after cutting, so that it would burn with relatively high intensity; " "When precommercial thinning was used in lodgepole pine stands, Alexander and Yancik (1977) reported that a fire's rate of spread increased 3.5 times and that the fire's intensity increased 3 times"); id. at 23 ("Countryman (1955) found that "opening up" a forest through logging changed the "fire climate so that fires start more easily, spread faster, and burn hotter"). See also Huff, M.H., R.D. Ottmar, E. Alvarado, R.E. Vihnanek, J.F. Lehmkuhl, P.F. Hessburg, and R.L. Everett. 1995. Historical and current landscapes in eastern Oregon and Washington.

exist both ways: some thinned forests have burned hotter than their surroundings and some have burned cooler. But why that is so is the subject more of hypothesis than of factual evidence.

How can it be that thinning could increase fire risks? First, thinning lets in sunlight and wind, both of which dry out the forest interior and increase flammability. Second, the most flammable material—brush, limbs, twigs, needles, and saplings—is difficult to remove and often left behind. Third, opening up forests promotes brushy, flammable undergrowth. Fourth, logging equipment compacts soil so that water runs off instead of filtering in to keep soils moist and trees healthy. Fifth, thinning introduces diseases and pests, wounds the trees left behind, and generally disrupts natural processes, including some that regulate forest health, all the more so if road construction is involved.

Undoubtedly, part of the reason the impacts of thinning are so hard to predict is that the historical conditions it seeks to recreate varied from site to site in ways we do not understand all that well. The notion that the Interior West was once blanketed with widely spaced trees subject to uniformly frequent and cool ground fires, used as an argument in favor of wholesale thinning today, is an extravagant over-simplification. As a general matter, it is problematic to extrapolate just how dense or sparse forests actually were in pre-settlement times.[4] We do know that some specific representations of widely spaced trees in the pre-settlement West are wrong.[5] We also know that pre-settlement fires burned with variable intensity.[6] How frequently even dry pine sites burned is scientifically controversial.[7] And both the density of trees and the natural, sustainable intensity of the fires they experienced surely varied with such factors as the elevation, the directional orientation, the moisture regimes, and the landscape position of forests. Thinning projects therefore raise a series of site-specific issues about what conditions are being mimicked and why.

Does this mean that we should not try to reduce fire intensity with thinning? Not at all. However, it does mean that thinning is not an established cure for intense fire that we can apply routinely without careful planning and evaluation. Rather it is an experiment that can backfire, one that we do not understand well and that badly needs existing procedural safeguards

Long-term implications of Salvage Logging

More scientific research exists about the actual impacts of post-fire, or "salvage," logging. Yet here, too, current laws and regulations are critical for minimizing harm to the long-term integrity and productivity of our forests, and loss of the public values for which they are to be managed. Great care is needed in part, Forest Service researchers have concluded, because salvage logging spreads exotic species, causes

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Part II: linking vegetation characteristics to potential fire behavior and related smoke production. U.S. Forest Service Pacific Northwest Forest and Range Experiment Station, GTR- 355. Portland, Oregon; U.S. Forest Service. 1995. Initial review of silvicultural treatments and fire effects on Tyee fire. Appendix A, Environmental Assessment for the Bear–Potato Analysis Area of the Tyee Fire, Chelan and Entiat Ranger Districts, Wenatchee National Forest, Wenatchee, WA. 5 pages.

[4] Stephenson, N.L. 1999. Reference conditions for Giant Sequoia forest restoration: structure, process, and precision. Ecological Applications. 9: 1253–1265; Landres, P.B., Morgan, P., and Swanson, F.J. 1999. Overview of the use of natural variability concepts in managing ecological systems. Ecological Applications 9: 1179–1188.

[5] The Forest Service's long-time poster child for supposedly pre-management open stand conditions in the dry West is this 1909 photograph from the Bitterroot National Forest. See Figure 1. The photo in Figure 1 actually is of a just-logged stand. See Gruell, G.E. 1983. Fire and Vegetative Trends in the Northern Rockies: Interpretations from 1871–1982 Photographs. U.S. Forest Service, Intermountain Forest and Range Experiment Station GTR INT–158. Ogden, UT. Figure 2 is a genuine pre-logging photo from the same area and year, showing much closer spaced trees. Arno, S.F., J.H. Scott, and M.G. Hartwell. 1995. Age-class Structure of Old Growth Ponderosa Pine/Douglas-fir stand and its relationship to fire history. U.S. Forest Service, Intermountain Research Station GTR INT–RP–481. Ogden, UT. Figure 1 was presented as an illustration of desirable, baseline conditions in a widely distributed 1998 Forest Service poster and in the first, *i.e.* May 31, 2000, edition of the agency's Coherent Strategy document. The General Accounting Office also included it in Western National Forests: A Cohesive Strategy is Needed to Address Catastrophic Wildfire Threats. U.S. GAO. 1999. Report no. GAO/RCED–99–65.

[6] Morrison, P.H and Swanson, F.J. 1990. Fire history and pattern in a Cascade Range landscape. U.S. Forest Service Pacific Northwest Forest and Range Experiment Station, PNW–GTR–254. Portland, Oregon.

[7] Baker, W.L. and D. Ehle. 2001. Uncertainty in surface-fire history: the case of ponderosa pine forests in the western United States. Can. J. For. Res. 31: 1205–1226.

erosion, and reduces wildlife usage, among other harms.[8] Post-fire soils are particularly susceptible to logging damage and associated loss of productivity.[9] Scientists both inside and outside the Forest Service agree there is little or no evidence that post-fire logging reduces the risk of later reburn, and warn that site-specific factors are critical in assessing the impacts of salvage logging.[10] All of this means that, as with thinning, it is very risky to streamline procedures for planning and evaluating salvage projects.

Consequence of Forest Management Without Environmental Review

When considering the need for review and evaluation of pre- and post-fire management projects, Congress should bear in mind how national forests came to need remedial attention. Forest health problems are the direct result of past management decisions and practices that were mostly adopted by the U.S. Forest Service without benefit of NEPA review. For example, while it is sometimes argued that the agency could not have known that fire suppression would create more intense subsequent fires, as early as 1930 the Journal of Forestry published a report by one of the agency's forest supervisors detailing exactly this consequence of aggressive fire suppression.[11] Had environmental review been required at that point, the wildfire-promoting aspects of fire suppression and of other management practices like grazing [12] and logging [13] would have been examined and could have been avoided or mitigated long before they reached current dimensions. In some measure this is what happened at the National Park Service.

To this day, Forest Service management threatens to aggravate the conditions most often cited as justifying shortcuts in project review and evaluation. In particular, the agency combines restoration projects with commercial logging even though the two kinds of projects have diametrically opposite priorities. The small trees associated with heightened fire risks in some places, *i.e.* those that were established only after management changed fire regimes, are not commercially valuable. Conversely, the larger and more commercially valuable that logged trees are, the more logging resembles the practices that contributed to increased fire risk in the first place. A companion problem is the continued uncritical focus of the National Fire Plan on massive, broadscale fire supression, despite uniform acknowledgement that "decades of fire exclusion"[14] have heightened fire risks.

Possibilities for Expediting Forest Management

Can anything be done to simplify and expedite Forest Service management of the kind of projects we're talking about? The answer is unequivocally yes.

Most readily, the agency can focus its energies on less controversial areas and projects. As a first priority, forest communities need assistance with the kind of drastic thinning in the immediate vicinity of structures that, though it does not leave a functioning forest, does in fact make the spread of flames to houses difficult, especially if they are retrofitted with fire resistance siding and roofs.[15]

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[8] McIver, J. D., and L. Starr, tech eds, 2000. Environmental Effects of Postfire Logging: Literature Review and Annotated Bibliograph. U.S. Forest Service, Pacific Northwest Research Station PNW–GTR–486. Portland, OR.

[9] Beschta, R.L, et al. 1995. Wildfire and Salvage Logging. Oregon State University. Corvallis, OR.

[10] See McIver, J.D. and L. Starr, supra note 8 ("postfire logging is certain to have a wide variety of effects, from subtle to significant, depending on where the site lies in relation to other postfire sites of various ages, site characteristics, logging methods, and intensity of fire"); see also Beschta et al., supra note 9; Everett, R. 1995. Review of Beschta document. Letter dated August 16 to John Lowe. On file with: U.S. Forest Service, pacific Northwest Research Station, Wenatchee, WA.

[11] Benedict, M.A. [Supervisor of the Sierra National Forest]. 1930. Twenty-one years of Fire Protection in the National Forests of California. Journal of Forestry 28: 707–710.

[12] Belsky, A.J. and D. Blumenthal. 1997. Effects of Livestock Grazing on stand Dynamics and Soils in Upland Forests of the Interior West. Conservation Biology 11:315–327.

[13] See supra note 3, and accompanying text.

[14] Compare http://www.na.fs.fed.us/nfp/ff/ff_overview_text.htm with http:/www.na.fs.fed.us/nfp/hazfuel/reports/brief_nfp_keypoint_hazfuel_032301.htm. Some fire suppression is, of course, essential. Missing from the National Fire Plan, however, is any awareness that ultimately all forests in the lower 48 states burn and that for those thta naturally burn frequently, putting out small fires aggressively, rather than allowing some burning, stores up bigger problems for later on. The 10-year Comprehensive Strategy, supra note 1, does show some awareness that restoration of fire is an integral part of the challenge faced in our Nation's forests.

[15] Cohen, Jack. 1999. Reducing the Wildland Fire Threat to Homes: Where and How Much? In proceedings of the Symposium on Fire Economics, Planning, and Policy: bottom lines; 1999 April 5–9. San Diego, CA; Gonzales–Caban, Armando; Omi, Philip N., technical coordinators. U.S. Forest Service Pacific Southwest Research Station Gen. Tech. Rep. PSW–GTR–173. Albany, CA.

As a second priority, there is an abundance of small diameter thinning that can be tried in the developed forest matrix that has been most modified by past management and thus is most likely to suffer from altered fire regimes. If this work is targeted to the specific slopes where dry forests once predominated, designed with size limits,[16] conducted with low impact equipment, and subject to long term monitoring, we may reduce subsequent fire intensities and will certainly gain the data essential to informed decisionmaking in the future. At all events, little controversy, and thus less delay, will attend well-designed light touch projects in heavily altered landscapes.

Third, Congress can and should provide the direction and funding for vigorous environmental review, monitoring, and subsequent evaluation of the kinds of thinning projects described above. We need to understand that failure to assess such projects fully and design them intelligently and conservatively may well make fire risks, and the associated costs—economic, environmental, and human—of firefighting, greater not less.

And finally, Congress can and should urge the Forest Service to build on existing authorities to fold parallel procedural requirements into the NEPA process. The Council on Environmental Quality regulations already encourage such overlap.[17]

What should Congress not do or allow? It should not allow the agency to confuse commercial logging with restoration, given their opposite incentives. It should prohibit the agency from wasting resources, time, and credibility conducting extensive and controversial "restoration" projects far away from communities. This is especially true of roadless and other sensitive areas, most of which have seen the least damage precisely because they have thus far been the least managed. It should not allow the Forest Service to shortchange NEPA, which is precisely the mechanism with the best chance of bringing into the light of day the risks of and counter-indications for treatments that may ultimately have the opposite of the desired result. And it should not dispense with or allow the agency to undercut administrative appeal rules, rules which are an essential part of public participation and public trust in agency decisionmaking, and which do not entail delays outside of the Forest Service's control of more than two months.[18]

Thank you for the opportunity to testify today. I would be happy to answer any questions you might have.

Mr. PETERSON. Jim Perry, please proceed.

STATEMENT OF JAMES P. PERRY, FORMER ASSOCIATE GENERAL COUNSEL, NATURAL RESOURCES DIVISION, OFFICE OF THE GENERAL COUNSEL, U.S. DEPARTMENT OF AGRICULTURE

Mr. PERRY. Thank you.

The problems that we face today in the Forest Service are not so much a result—.

Mr. PETERSON. Could you get closer to the mike?

Mr. PERRY. OK.

The problems that we face today in the Forest Service are not so much a result of the direct conflict of statutes as the combined layering effect of a broad number of environmental statutes over a period of years, along with the gradual expansion of these statutes by regulation and judicial decision. And in the case of NEPA, which primarily affects the Forest Service, the implementing regulations of that statute provide the legal basis for extensive and time-consuming judicial review of virtually any land management decision the Forest Service would care to make.

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[16] See, *e.g.,* National Park Service. 2001. Environmental Assessment, Hazard Fuel Reduction and Site Restoration, Sequoia & Kings Canyon National Parks, East Fork Kaweah Developed Areas, Oriole Lake and Silver City. Environmental Compliance Document 2001–19. Three Rivers, CA. This project uses hard and fast criteria that preserve all trees over 40 feet high and all down logs over 8 inches in diameter.

[17] 15 C.F.R. §1506.4.

[18] Compare 36 C.F.R. § 215.13(a) with 36 C.F.R. § 215.10(b).

Also, we might remember that Senator Hubert Humphrey once said that the purpose of NFMA, the other principal Forest Service statute, is to get the Forest Service out of the courts. Unfortunately, the very numerous resource requirements of NFMA have provided ample grounds for litigation over the years. So, simply put, the overexpansion of judicial review of Forest Service activities has greatly hindered the agency in carrying out its statutory mission. Not only that, but the extensive time necessary to make decisions for possible administrative review and litigation has dissuaded managers from making many worthwhile decisions.

I could cite numerous examples of appeals and litigation abuse. One or two might be the announced intent of some organizations to appeal all timber sales, evidently regardless of merit. We have another case in which a group of plaintiffs have now filed nine appeals in the 9th Circuit Court of Appeals regarding the Mt. Graham Red Squirrel.

But what I would like to spend my time on today is a few recommendations to help this process.

First, Congress should review the current status of Project, forest plan and Multiforest NEPA compliance. I recall that when NEPA was enacted in 1969, the contemporaneous understanding was that agencies would put together about a 15-page EIS. But through development of regulations, agency practice and judicial decisions, EISs now run hundreds of pages.

In recent years, the Forest Service has become the largest single producer of EISs in the Federal Government, accounting for perhaps one-fourth the total. Also the Forest Service makes hundreds of EAs, many running 100 pages in length. Preparation of all of these documents, in addition to the forest plan EISs, takes a massive amount of forest time and budget.

I think what Congress needs to do is to consider whether the Forest Service should continue to be funded to do forest plans and supporting EISs, unless the Forest Service is going to be given some statutory coverage to find that the EIS done on the forest plan is going to act as an umbrella for all activities under the forest plan.

The next suggestion I would make is that the Congress needs to review the extent to which other laws have changed and altered multiple-use management of the national forest system. In the Pacific Northwest, of course, the Forest Service lands protect the spotted owl. Those same lands often protect the spawning grounds of the salmon. In the Southeast we have the Red Cockaded Woodpecker, and I could go on. But in each case, the demise of the species was not the primary result of activities on national forest lands. Nevertheless, however, the remedy has been the misallocation of the burden of species protection to the national forest.

Some people have suggested that the individual species protection is a form of ecosystem management, but I have reviewed the work of Dr. Robert Bailey, a Forest Service scientist who has developed ecoregion maps of the whole country; and interestingly, when one overlays these single species protection zones over the ecosystem map of Dr. Bailey, one sees little, if any, correlation. So I

would suggest that the one-size-fits-all management for single species protection ignores the very basis of ecosystem management.

The other suggestions I have are that the CEQ needs to develop regulations to harmonize the various environmental statutes. We had the CEQ-promulgated NEPA regulations in 1978. They have made very few change since, but a lot of water has gone over the dam. Likewise, CEQ needs to address the particular problems of Federal land management agencies.

The Forest Service has been impacted by NEPA more than perhaps any other single agency, and there is a constant tension between just basic statutes. CEQ has been remiss, in my judgment, in failing to address these problems.

Summing up here, I would support the Public Land Law Review Commission idea, because I think what we need to do is build a base of public understanding and compromise on future legislation, and I think it is important to assuage the concerns held by many that somehow review and revision of environmental laws is going to result in the loss of environmental protections.

Thank you.

[The prepared statement of Mr. Perry follows:]

Statement of James P. Perry, Former Associate General Counsel (Retired), Natural Resources Division, U.S. Department of Agriculture

My name is James P. Perry. I am a career civil servant, having retired from the Office of the General Counsel, U.S. Department of Agriculture on October 1, 1998, after more that 32 years of service. During that time I served as Deputy Assistant General Counsel for Forestry from 1980 to 1989, as Assistant General Counsel for Natural Resources from 1989 to 1995 and as Associate General Counsel for Natural Resources from 1995 until my retirement. In the latter two positions I headed the section of the Office of General Counsel which provided all natural resource program legal advice to the Forest Service and the Natural Resources Conservation Service.

BACKGROUND

My career spanned many milestones in natural resources law including the passage of the National Environmental Policy Act of 1969, the Endangered Species Act of 1973, the Monongahela (clear-cutting) litigation, the National Forest Management Act of 1976, promulgation of several versions of Forest Land Management Planning regulations, and the Northern Spotted Owl litigation just to name some of the highlights. During that time I had the duty and privilege of personally advising Chiefs John McGuire, Max Peterson, Dale Robertson, Jack Ward Thomas, Mike Dombeck and, prior to his appointment as Chief, Dale Bosworth.

During three decades as agency counsel I was in a unique position to witness many changes in the utilization and administration of our National Forests. At the time I joined the Office of the General Counsel in the late 1960s there were few legal challenges to Forest Service management policy for two closely related reasons. First, few organizations or individuals were found by the courts to have the legal right or legal standing to challenge agency decisions. Second, there was little statutory law to apply to Forest Service actions.

The National Forests were essentially administered under a two basic statutes, the Multiple–Use Sustained–Yield Act of 1960 (MUSYA) and the Organic Act of 1897. MUSYA codified the management practices of the Forest Service over the previous decades, providing that the National Forests are established and shall be administered for "outdoor recreation, range, timber, watershed, and fish and wildlife purposes." Early judicial interpretations of MUSYA described the statute as "breathing discretion at every pore." Thus, there was little basis for a court to find that the Forest Service had failed to give "due consideration" to the resource decision at issue and federal courts generally accorded a degree of judicial deference to agency administrative expertise.

Beyond the broadly worded mandate of MUSYA, there was little law to apply to Forest Service management decisions. That situation began to change rapidly in the

1970s with the dramatic expansion in the number and complexity of the statutes which regulated the National Forest System. The result, primarily unintended, was an explosive growth in litigation challenging agency decisions.

The layering effect of multiple statutes designed to enhance some aspect of environmental quality combined with their gradual expansion by regulation and judicial decisions has rarely been analyzed. While some will insist that our environmental laws work well together, it seems unlikely that statutes addressing such diverse topics as air quality, water quality, and wildlife, enacted in different decades with minimal cross reference would be fully integrated to avoid redundancy or to address statutory interactions and conflicts.

The broad language of NEPA and its implementing regulations has provided a basis for extensive and time consuming judicial review of administrative decisions by land management agencies. Likewise, one of the authors of the National Forest Management Act of 1976, Senator Hubert Humphrey, stated that the purpose of that Act was to get the Forest Service out of the courts. Instead, the numerous resource requirements of NFMA have been litigated extensively.

The expansion of judicial review for Forest Service activities has greatly hindered the agency from proceeding in timely fashion with management initiatives and prevented or delayed many projects, including those which are environmentally beneficial. In addition to the substantial costs of defending litigation, the cost of preparing many projects with the expectation of extensive administrative appeals followed by litigation undoubtedly dissuades local managers from undertaking worthwhile projects due to budget concerns. I could cite numerous examples of appeal and litigation abuse such as announcements by some groups of an intent to appeal all future timber sales and the filing of at least nine appeals to the 9th Circuit Court of Appeals by plaintiffs in litigation involving the Mt. Graham Red Squirrel.

I commend this committee for its efforts to improve the body of laws protecting the environment. With a shared understanding that the goal is to improve public land management without weakening environmental protections, I am hopeful that all interest groups will see the benefits of harmonizing and simplifying existing statutes.

RECOMMENDATIONS

Congress Should Review the Current Status of Project, Forest Plan and Multi–Forest NEPA Compliance

I recall the enactment of the National Environmental Policy Act of 1969. The contemporaneous understanding at the date of passage was that federal agencies should prepare EISs of about 15 pages in length. Through development of regulations, agency practice and judicial decisions EISs now run hundreds of pages. While NEPA may have improved the environmental decision making of many federal agencies, NEPA is primarily a procedural statute and not a mechanism for policy determinations. In recent years the Forest Service has become the largest producer of EISs in the federal government, accounting for roughly one forth the national total. Further, the Forest Service prepares hundreds of Environmental Assessments (EAs) annually, many of which run roughly 100 pages in length. Computers now generate boilerplate EISs, which are considered necessary to respond to computer generated public comments, appeals, and lawsuits.

Preparation of these environmental documents involves a substantial commitment of Forest Service staff and budget resources. Broad scale and costly Forest Plan and larger programmatic EISs overlap project EISs and EAs, much of material being repetitive in nature. Particular scrutiny should be given to the appropriate role of the Forest plan EIS in order to efficiently utilize available resources. After careful study Congress should consider conforming NEPA to better serve the administrative functions of a land management agency under a statutory scheme designed to avoid repetitive analysis at significant cost but little benefit. Simply put, if the Forest Service is to be funded to continue the comprehensive and interdisciplinary Forest Planning process with its extensive public involvement and supporting EIS, the resulting product must be deemed statutorily sufficient to meet NEPA for all actions conforming with the plan or, at a minimum, significant limitations should be placed on additional analysis.

Congress Should Review the Extent to which Other Laws Have Impeded the Management of the National Forests for Multiple Use Purposes

Congress has followed a consistent and logical path in its management direction over the century, first providing successively for protection (Organic Act of 1897), general management standards (MUSYA of 1960) and ultimately comprehensive land management planning (NFMA of 1976). Second, Congress has delegated to the

Forest Service the broad latitude to determine which combination of uses under the Multiple–Use Sustained–Yield mandate best meet the needs of the public. Third, Congress expects such multiple use decisions to be guided by input received in the very public land management planning process.

The ability of the Forest Service to continue its legacy of wise and balanced management of public lands has been placed at risk by a number of factors, especially the rapid development of private lands. From the panhandle of Florida to the upper piedmont of South Carolina, the desert southwest and the intermountain west, the story is the same. Explosive commercial growth is coupled with sprawling private home development. I understand that a Forest Service study released in the past few weeks on forests land status in the southeastern United States details this problem. The loss of undeveloped land has resulted in increasingly stringent restrictions on National Forest System lands designed to protect individual wildlife species, many of which are listed species under the ESA. Inflexible by statutory construction, the ESA has dictated land management decisions on millions of acres.

In the Pacific Northwest National Forest lands are expected to support surviving populations of the Northern Spotted Owl, yet there is relatively little restriction of private or state lands. The same is true of the Red Cockaded Woodpecker in the southeast. Further, many of the same National Forests supporting the Owl are also under restriction to support salmon populations listed under the ESA. In each case the demise of the species was not the primary result of activities on the National Forests. General land development coupled with timber harvesting on private, state and BLM's "O and C" lands far exceeded the impacts of harvesting on the National Forests in the case of the Northern Spotted Owl. Over fishing, timber harvesting and particularly dam construction have vastly reduced many species of salmon. Nevertheless, rather than seeking a broad remedy, there has been a misallocation of the burden of species protection to the National Forests.

Some have referred to broad scale plans to protect individual species as outstanding examples of "ecosystem management". I disagree. I have had the opportunity to review the work of Forest Service scientist Dr. Robert Bailey who developed an ecosystem map for the whole of the nation, an 8" by 11" copy of which is included as an attachment to my testimony. In Forest Service Miscellaneous Publication No. 1391 entitled Description of the Ecoregions of the United States (1996) compiled by Dr. Bailey, the ecoregions depicted tended to follow landforms, climate, soil, vegetative types and fauna. However, when the broad scale management prescriptions dictated by the ESA for various individual species located on National Forest System lands are placed as overlays to the ecoregions described by Dr. Bailey, one observes little, if any, correlation. In other words, the one size fits all management direction for single species protection seems to ignore the very basis of ecosystem integrity.

Dr. Bailey has also prepared a map overlaying individual National Forests on an ecoregion map which I am providing to the Committee along with a copy of Publication No. 1391.

Let me be clear that I strongly support the goals of the ESA. However, the time has come to study and revise the ESA to encompass more tools and greater flexibility for species preservation. Relying solely on the path of least resistance—the conversion of National Forests at their random locations to narrow management goals will likely not suffice in the long term to adequately protect many endangered species. Congress should address the conversion of multiple use lands to limited use resulting from undue reliance on the National Forests for ESA purposes.

CEQ Should Develop Regulations For All Federal Agencies Harmonizing Environmental Statutes

Under the National Environmental Policy Act of 1969, the Council of Environmental Quality (CEQ) is charged in Section 204 with the responsibility "to review and appraise the various programs and activities of the Federal Government" and "to develop and recommend to the President national policies to foster and promote the improvement of environmental quality.

Implementing regulations for the National Environmental Policy Act were promulgated in 1978 and may be found at 40 CFR Parts 1500–1508. These regulations were well drafted, have withstood the test of time and continue to provide a firm base for the implementation and interpretation of the Act. However, with a quarter of a century of experience for guidance, the enactment and amendment of numerous other environmental laws and the development of case law on environmental statutes it should come as no surprise that there is now a definitive need to supplement CEQ's existing regulations.

CEQ should be requested to address opportunities for harmonizing the procedural aspects of the nation's environmental statutes for all federal agencies and to develop

uniform requirements for coordination of NEPA, ESA, the Clean Air Act, the Clean Water Act and other principal statutes. Many issues can be addressed by federal regulations which should be accorded deference by federal courts. However, should CEQ determine after careful study that the effective and efficient coordination of the multitude of environmental statutes exceeds its regulatory authority, CEQ is authorized under Section 201 of NEPA to make recommendations for legislation.

CEQ Should Develop Supplemental Regulations Addressing the Particular Problems of Federal Land Management Agencies

Federal land management agencies are faced with unique difficulties far greater than those federal agencies that merely fund projects in complying with NEPA, ESA and other environmental statutes. A classic example is that NEPA is drafted principally to apply to a site-specific project at a single point in time rather than to encompass the responsibilities of land management administering vast acreages over decades. Virtually every management action arguably requires NEPA compliance and may require revision of NEPA analysis already performed for on going activities. Attempts to address ecosystem problems involving multiple National Forests and numerous wildlife species increases the risk that evolving scientific information will invalidate the premises on which the NEPA analysis was based, thereby exposing the land management agency to the possibility of an injunction covering thousands of acres. The Forest Service attempted four EISs before passing judicial muster on the protection of the Northern Spotted Owl. The greatest difficulty faced by the agency was the continually evolving scientific opinion on protective requirements for the owl which outdated the detailed NFMA and NEPA processes before they could be completed.

Further, compliance with one environmental statute may place the federal agency in violation of another. A constant tension exits for land management agencies in the interface between NEPA, ESA and NFMA in the case of the Forest Service. A common predicament for the Forest Service is that the implementation of wildlife protection measures in compliance with ESA may require amendment or revision of NFMA plans and supporting NEPA compliance, a process which requires months to complete.

The rebalancing of multiple use activities resulting from the revision of forest plans precipitated by ESA protections may affect some of the assumptions on which ESA protections of the same or other species were based. Likewise the updating of forest plans now passing the 15 year life established by NFMA may trigger new or revised ESA protective requirements. One federal land management agency, faced with the same complexities, once argued in federal court that no ESA protections could be implemented until NEPA compliance was completed. Supplemental CEQ regulations are needed to address problems unique to the Forest Service, the Bureau of Land Management and other land management agencies. Again, should CEQ determine that regulatory remedies are inadequate, legislation can be recommended.

Congress Should Review the Cumulative Effects of Multiple Public Involvement Statutes in order to Streamline Process and Eliminate Duplication

There is no dispute that public involvement substantially improves the quality of agency land management decisions and develops public support and understanding of forest management. Congress provided for comprehensive public involvement in the development of forest plans in the National Forest Management Act of 1976. By terms of NFMA, plans are to be developed by an interdisciplinary team, made available to the public three months in advance, and the Secretary is to provide for public meetings and other measures that foster public participation, to list only some of the public involvement required.

Further, in a partially redundant requirement, Section 6 of NFMA requires that land management plans are to be developed in accordance with the National Environmental Policy Act which has resulted in the preparation of an Environmental Impact Statement for each forest plan. In addition to a comprehensive EIS on the Forest Plan, the agency has also found it necessary in order to pass judicial muster to prepare individual EISs and EAs on many projects to be carried out in the planning area, together with EIS's on multi-forest initiatives. Implementation of protective measures for species listed as endangered under the ESA also generally requires amendment or revision of EISs on multiple Forests. Broad scale natural disasters, fires, new scientific information or the listing of an Endangered Species may suddenly outdate forest plans and supporting EISs.

In obtaining regular advice and public input from local or national organizations in a collaborative fashion, the Forest Service is well advised to comply with the any procedural and notice requirements of the Federal Advisory Committee Act. In addi-

tion, the Forest Service has historically provided the public with a relatively formalized administrative appeal process, certain elements of which are now a statutory requirement. Of course, following the exhaustion of administrative remedies, full judicial review of policy decisions made with extensive public input is available.

This combination of all of the above aspects of public notice and involvement, planning and analysis, administrative appeal and judicial review for virtually every project or activity on the National Forests results from an unfortunate layering of individually worthwhile statutes. Too much of a good thing has led to a waste of public resources and agency paralysis. The recent proposal of the Forest Service to shorten the administrative appeal process on the treatment of fire damaged timber on the Bitterroot National Forest is a prime example of an attempt by the agency to cut through a multi-layered public involvement process which impedes timely resource management activities.

Currently there seems to be great interest in "collaborative" public process. Legislative adoption of some form of collaborative process should be considered only if some existing forms of public involvement are dropped. Each type of public process has its dedicated constituency, thus it is a task for Congress to design efficient public process by selecting some, but not all, forms of public involvement. Options include a simplification of the planning process, the restriction or elimination of the administrative appeal process and a narrowing of the scope of judicial review.

Forest Planning Demands Simplification Before Expenditure of Public Funds on Another Round of Land Management Plans.

Over fifty Forest plans are now beyond the 15 year statutory limit imposed by NFMA at 16 U.S.C. 1604(f)(5). A legal morass awaits challenged project actions on overdue plans. Recently promulgated planning regulations are unduly complicated, confusing and far exceed the administrative capability of the Forest Service as currently staffed and funded.

The agency needs legislative relief in the form of a moratorium, for which there is precedent, to complete updated forest plans. Equally important the Forest Service must recognize that the planning process must be vastly simplified to conform to its limited staff and budget.

I suggest that the Committee obtain a current report from the Forest Service on the status of the Land and Resource Management Plan on each Forest including the projected date of completion of the second generation plan together with an estimate of the cost of completing the plan and EIS under the current regulation. I believe this data will graphically demonstrate the need for a prompt overhaul and simplification of the planning process by displaying a disconnect between the agency budget, the resources necessary to complete the planning process and the relative benefits of generating an excessively expensive planning document which will do little to improve environmental quality, forest management or to provide services to the public.

The Forest Service Should Undertake a Comprehensive Review of its Regulations and Policies Beginning with the Land and Resource Planning Regulations with the Objective of Vastly Reducing its Administrative Requirements.

From its inception the Forest Service has been one of the finest administrative agencies in the federal government. However, in the agency's zeal and dedication to the highest standards of land management it has often promulgated regulations and policies that establish goals which are extremely difficult to attain. Judicial decisions have often tended to treat these goals as mandatory rather than policy objectives.

A ready example may be found in the initial version of land and resource planning regulations in which the Forest Service expansively translated the NFMA direction to develop guidelines to achieve the goal of providing "diversity of plant and animal communities" for the purpose of meeting multiple use objectives into a requirement to maintain the "viability" of all vertebrate species. This most laudable objective has been judicially interpreted by some courts to require extensive protective requirements and development of species population data which are beyond the practical capability of the agency. This is not to suggest that the Forest Service should retreat from its efforts to protect wildlife values, but simply avoid turning goals into mandatory legal requirements which promote litigation.

The Forest Service should be directed to review, scale back and simplify the many self-imposed administrative burdens which have accumulated over the years in its land and resource planning regulations, administrative appeal procedures and other management activities to reflect more accurately the current staffing and capabilities of the agency. I understand that Chief Bosworth has initiated such a review. It may be that cost estimates of various elements of current regulatory requirements

would be helpful in this endeavor and that Congressional direction will ultimately be necessary to prune excess procedures which have become well accepted.

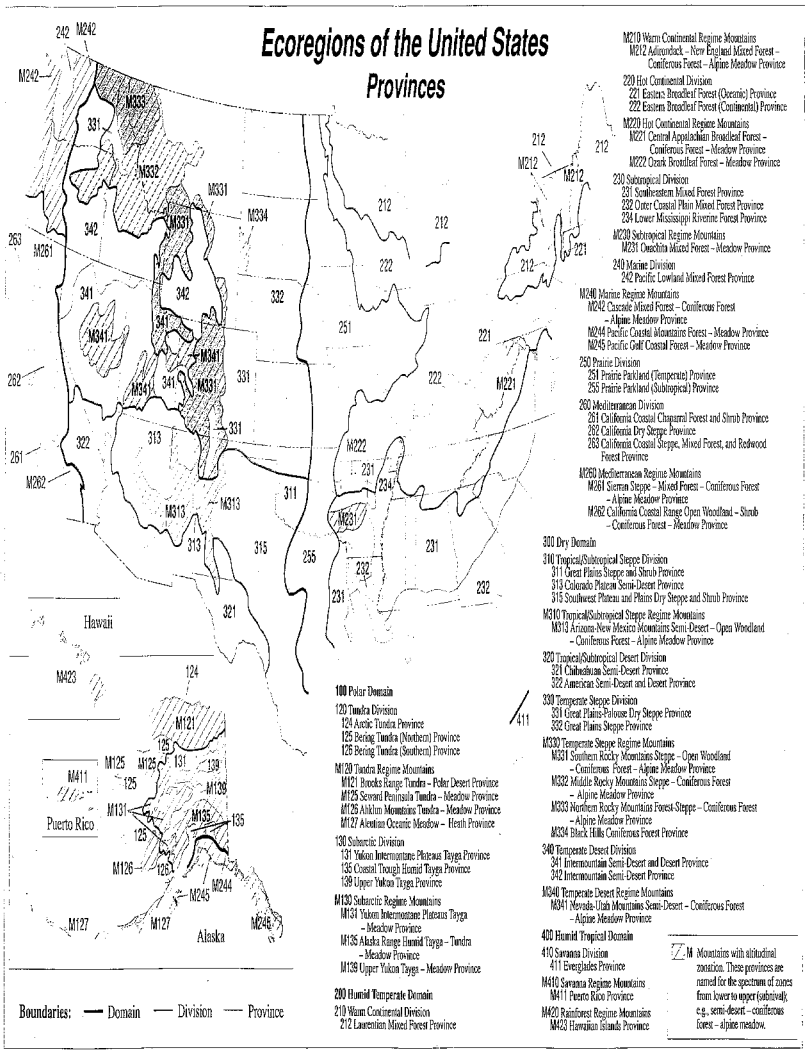
CONCLUSION

One final observation—many citizens of varying persuasions have recognized the need to streamline National Forest System management. I question whether mere tinkering with the National Forest Management Act would suffice to substantially improve the process. Some mechanism must be found to integrate the many environmental statutes which vitally affect the planning process, principally the National Environmental Policy Act and the Endangered Species Act. Without a unified approach, the agency will forever be unable to meet its statutory duties under those acts in a timely and cost effective manner. Further, both the Forest Service and the Congress must act to radically simplify management direction.

With little progress having been made recently on the legislative front, perhaps it is time to consider an approach similar to the Public Land Law Review Commission to build a base of public understanding and compromise on future legislation while assuaging the concern felt by some that review and revision may result in the loss of environmental protections

Thank you for this opportunity to testify.

[An attachment to Mr. Perry's statement follows:]



Source: R.G. Bailey [Ecoregions of the United States, USDA Forest Service (scale 1:7,500,000, revised 1994)]

Mr. PETERSON. Yes. We thank you both for your good testimony.

Mr. Lawrence, you spoke quite eloquently of what kind of timbering and what kind of processes you thought the Forest Service should get into or not get into. I guess I would—I was looking at your resume, and you taught auto mechanics, you taught philosophy, and then you went to law school. Where did you get your natural resources education?

Mr. LAWRENCE. Well, I went to law school when I saw what was happening to the national forests around me where I spent most of my weekends and vacation time. My education about natural resource issues has come since I graduated from law school and specialized in natural resource issues.

Mr. PETERSON. So you have learned it in the courtroom?

Mr. LAWRENCE. Not so much, but some. I would say I owe a great deal to scientists like Jack Thomas and his colleagues, who often are very generous with their time in talking through what we do and don't know about the consequences of forest management.

Mr. PETERSON. What kind of things did you see in the mismanagement of the forests you spoke of that attracted you into this field?

Mr. LAWRENCE. I saw an explosion of clear-cutting in the Pacific and the Northwest starting in the latter part of the 1970's and into the early 1980's. When I first started climbing mountains in Oregon, you could stand on top of mountains and look as far as the eye could see and not find clear-cut, And by the time I went to law school it was a crazy quilt of clear-cuts, a much, much altered landscape, one in which the public values and the things that the people that I knew in Oregon who treasured the natural forests for really were disappearing pell-mell.

Mr. PETERSON. Mr. Udall talked about employing pilot projects to test new methods and guarantee governing structures for forest management. Do you support pilot projects?

Mr. LAWRENCE. I think it is a good idea to take a look at alternative ways to manage national forests. It is difficult to endorse pilot projects without any specifics. I think a lot of different—details make all of the difference.

Mr. PETERSON. We are assuming good pilot projects, not—.

Mr. LAWRENCE. I am all in favor of good stuff, including good pilot projects.

Mr. PETERSON. Do you think there is excessive litigation interfering with the Forest Service management?

Mr. LAWRENCE. I think that that Forest Service draws a lot of litigation. I think that the Forest Service sometimes does what it can to avoid litigation and sometimes it chooses not to. I think it runs head on into it. And again, I think that much of the answer to getting on with the legitimate business of managing national forests really lies in the agencies choosing less controversial places and less controversial practices for what it does.

That is not a complete answer.

Mr. PETERSON. But it would be better if they just didn't cut down trees, period?

Mr. LAWRENCE. That is certainly not my position. It is not the position of the majority of environmentalists that I work with.

Mr. PETERSON. But you spoke of thinning only small trees, no mature trees.

Mr. LAWRENCE. Well, I think that there are two—there are many different kinds of thinning. Thinning is sometimes done for truly silvicultural reasons, to enhance the size, the value and the growth rate of residual timber. That is a commercial practice, and that is not what you are hearing we need to streamline processes for to get done in a hurry.

What you hear we need to streamline processes for is what is portrayed as a pandemic forest health problem across many tens of millions of acres of national forest lands which has to be addressed through thinning. My point about that is that from a scientific standpoint the thinning that we may be successful doing focuses on the trees that post-dates disturbance of fire regimes, and those are small trees, whereas commercial logging focuses on medium and large trees, which are part of the solution, not part of the answer, and need to be left behind when we are doing thinning for restoration purposes.

Mr. PETERSON. But large trees should be left to die a natural death?

Mr. LAWRENCE. When we are trying to restore forest health, when we are trying to reduce the intensity of forest fires, and when we are trying to protect our communities, we have no business taking out medium and large-sized trees.

Mr. PETERSON. Just interested for your thoughts.

Ms. MCCOLLUM. Thank you, Mr. Chair. It is always interesting to hear Hubert Humphrey being quoted, being from Minnesota and having just spent some time with former Vice President Mondale. I am saying that quite often, Hubert Humphrey's words about logging in effect and his goals with some of the legislation he supported being misquoted, and you were very accurate in quoting him, Mr. Perry. So I appreciate that.

If I understood your comments on thinning, Mr. Lawrence, correctly, you were not opposed to logging; is that correct?

Mr. LAWRENCE. That is correct.

Ms. MCCOLLUM. And when it comes to thinning we need to look at why we are doing it, the cause and the effect, and we need to do some scientific research working with the Forest Service to find out exactly what does go on after a forest fire in areas where there has been thinning done; in other words, document the thinning, what slash was left behind, and then take factors of weather condition in and then do a cause and effect of what the thinning had on the forest fire using scientific evidence and really starting to record and log that. Did I hear you correctly?

Mr. LAWRENCE. That is absolutely correct.

Ms. MCCOLLUM. Thank you.

Mr. PETERSON. I might just do a follow-up there. You were talking about no medium or large trees. But, I guess—which raises a problem as I see it. I come from the hardwood forests in the East which have no relationship to softwood forests. In you only cut down small trees there is no value, so now you have to really appropriate a lot of money. And you talk about timber sale losses. That is one of the reasons that the Forest Service has a loss that they are timbering because they don't cut trees that are of any

value or of very much value very often, and so—which normally pays for the cost of the thinning.

You put some value in there when—I have a few plots of timber on my own, small. And when we thin, sometimes we—I just thinned 30 acres, and we just sold enough value to make it a non-loss sale to pay for the thinning because it was a young forest that was too thick and had a lot of undesirable species, as far as I am concerned, and we thinned, and today it is much healthier. But we had to sell a few good trees to pay for the cost of thinning it. So I mean, if you never cut a medium or large-sized tree then your thinning becomes a very expensive procedure.

Would you respond to that?

Mr. LAWRENCE. Well, the Forest Service has lost money on a whole variety of different kinds of timber sales, including clear-cutting virgin old growth rain forest. I think that that presents one set of issues, and whether we are going to pay to do the kind of restoration thinning that has the best chance of dealing with fire risk problems is another question.

You won't find my organization objecting to this Congress or the Forest Service spending money to try to do thinning in a way that is most likely to address what after all are very expensive forest fire problems and to reduce the costs, economic, environmental and human, of firefighting.

Mr. PETERSON. Because I don't think any of us will argue that when you have a hot fire what it leaves behind is pretty nasty for a long time, and nature certainly does not win.

Mr. Udall from New Mexico.

Mr. TOM UDALL. Thank you, Mr. Chairman.

I think you were both here when I asked the two chiefs about collaboration and pilot projects. And could you both—I know the Chairman asked one of you, but could you both just tell me what your thoughts are on that kind of approach and putting forward a piece of legislation like that?

Mr. PERRY. I have two concerns about collaborative public process. The first is if it becomes merely another layer on the very substantial layers that we have now, then it only slows down further the ability to accomplish any goal.

I think collaboration, if incorporated into the statutory scheme, should then in the same statute drop out perhaps administrative appeal. In fact, it should perhaps bind all of the participants to live with the ultimate decision of the collaborators. What we don't need is yet another process which is going to add a year or two to the decisionmaking time.

The second concern I have is that very often the collaborationists in their zeal come up with a management scheme which is much more costly than that that would be devoted to other national forest lands. As a result, it draws off the funds into the area of collaboration.

So with those two caveats, I think we should proceed with some pilot projects and see if we can't improve the overall management scheme.

Mr. LAWRENCE. Congressman Udall, I don't have the benefit of having seen your letter to the Chief. I will take a look at that and think more concretely about it.

Again, let me say I think inherently, if we are talking about good pilot projects here, that they are worth pursuing. I think it is difficult to define what a good pilot project might be, and the record on collaboration has been kind of spotty. I do think that there are things that Forest Service can do within the existing planning process to act more collaboratively and to encourage participation and to create more buy-in among the public.

Most notably, I think it is often the case that people who are very involved in Forest Service administrative processes and commenting on management activities feel that the decisions that the Forest Service is considering or the alternatives it has got in its environmental documentation don't really represent what they think makes the most sense.

They don't have a horse in the race. That is by no means always the case, and indeed there is an excellent counter example recently on the Santa Fe National Forest in your State, where the Santa Fe National Forest supervisor adopted an alternative for the Santa Fe watershed which was suggested by a citizen group.

But it does happen, but it is all too often the case that the ordinary NEPA processes that the Forest Service runs leaves people feeling disenfranchised even before the outcome, and I think that people are much more susceptible to accepting the outcome of processes if they think their idea has got a fair shake in it.

Mr. TOM UDALL. Mr. Lawrence, as I understand it, your view is that there would be less controversy about the national fire plan if the fuel reduction work was concentrated in the immediate urban interface area. Is that a fair characterization?

Mr. LAWRENCE. I think there would be less delay. I think it would be easier to do relatively straightforward, simply NEPA documentation for that, and I think there would be far less litigation. It would be going overboard to say there would be no controversy, particularly because those kinds of decisions are going to implicate local land use concerns.

So it not going to be controversy free, but I think it is going to be much faster. It is certainly the case that once you leave the immediate urban-wildland interface and move out into the general forest, that activities, thinning activities, which focus on small diameter trees and stay out of undeveloped, unrouted areas and sensitive zones like riparian areas are far less likely to be challenged and delayed.

Mr. TOM UDALL. Mr. Perry, you say in your statement, I think on page 5, that one of the factors that is—I am down about three paragraphs—is that the Forest Service to continue its legacy of wise and balanced management of public lands has been placed at risk by a number of factors, especially the rapid development of private lands. And then you mentioned sprawl a little later on.

It seems to me that the development of private lands, the way you are talking about has put more pressure on public lands and isn't what we need to get out of this process—is both have the Endangered Species Act being funded in a way that the Federal Government can work with private landowners so they can recognize an obligation there, and then, second, do something about the sprawl itself, which is causing all of the problems there.

Mr. PERRY. I would agree with both. I have traveled a great deal here in the last few years since retirement. No matter what corner of the country I have been in the urban sprawl and commercial development is tremendous, and we need to be able to restrain that. Otherwise the entire burden of species protection falls on the Federal lands. And unfortunately it falls along the line of least resistance. We sort of assume that the endangered species would like to live in precisely the administrative boundaries of the national forests when really the species may require much broader protection and the incorporation of private lands into the protective scheme. Of course that is going to require some budget.

Mr. TOM UDALL. Thank you both, and thank you, Mr. Chairman.

Mr. PETERSON. I might just make a comment to the sprawl issue, because there is something else happening that a lot of people are not aware of. In Pennsylvania alone, 20 years ago, we had 14 million acres of commercial forest in Pennsylvania. Today we have 18 million acres of commercial forest in Pennsylvania.

How does that happen? Well, that is happening throughout much of the northern part of this country, because farmland is going back to forest.

I hunt on farmland where it is—a forest that is starting to develop some value. When I was a kid, it was open meadows, brush, some thorn brush and some wooded trees starting to grow, but today it is solid forest.

That is happening all over. So 3 million acres of additional Pennsylvania is commercial grade forest. If you added low quality forest, you could probably say we have gained 5 or 6 million acres, according to the foresters that I have talked to.

So while we do have urban sprawl, one of the problems we have is the policies on rural America we have to live with. We are chasing all activity out of the rural areas. People have to go to the urban areas to make a living, to make a good salary. So that is causing the urban sprawl. The decline of rural America is the reason that we have urban sprawl, because you can't make a living out there doing anything, because people don't want you to do most of what we used to do there.

Final question I would like to ask is, Mr. Perry, the primary reason that the Forest Services becomes so caught up in process and paperwork is the rampant paranoia about appeals and litigation.

What would you recommend to Congress and what would you recommend to the Forest Service?

Mr. PERRY. To the Forest Service I would recommend that they go through their administrative process and shear out much of the complicated planning and administrative appeal process that they have put together. I think Chief Bosworth has already made one initiative in that area along those lines.

For the Congress, I think we really need to think about scaling back the amount of processes that the Forest Service faces. I think there is a significant disconnect between the ability of the Forest Service to produce these massive forest plans and the accompanying EIS's. If you were to ask the Forest Service to produce a cost estimate of how much it is going to take to fund these plans, how long it is going to take to produce them and then look at the

Forest Service budget, I think there would be a complete disconnect.

Mr. PETERSON. I think if you put all of our economy in the same process, paperwork process, that we have put them into, we wouldn't have any of the new inventions or any of the new things we enjoy today because the process would stop change.

Mr. Lawrence, do you want to react to that issue?

Mr. LAWRENCE. You know, I think I have said most of what I have to say about this. Let me just say this about the appeals process, which I hear often blamed as delaying Forest Service activity. The Forest Service's appeal process is really very short. It entails 45 days to get documents and analyze documents. Often that is time that is completely chewed up by trying to get the agency to disgorge things in its records through the FOIA process.

Thereafter the only other time constraint is how long it takes to make its decision about the appeal, followed by a 15-day waiting period. So this is a process that can last weeks, not years.

When you are talking about very urgent activity that needs to be undertaken on an emergency basis, sometimes that is too long. The regulations allow for emergency exemptions from stay.

Otherwise, you are talking about the time that is built in, a very short time, built in at the front of every project which in the beginning takes a little time to get past, but once you got past that and started priming the pipeline with projects, doesn't delay the pipeline at all. It is just something, a little few weeks at the very beginning of the pipeline, and thereafter all projects that are waiting for the appeals process to run are behind projects that have already been through that process.

So I think that is really a red herring. That is a bad thing for Congress to focus on.

Mr. PETERSON. But I do think the Forest Service and other agencies spend all of their time trying to make decisions litigation proof, and of course you can't. And when they try to do that, that is what takes—but let me just conclude with this. Most of the lawsuits in my region are inspired by national groups, maybe such as yours, that have college students as employees on a part-time basis who file lawsuits, who get a pro bono lawyer from a local university, costs them nothing, they invest nothing, they are not a part of the system, they are in school learning education. And how does that fare?

I mean, I have not had a lawsuit yet from a group of concerned citizens who really saw what was going on and are really concerned about the degradation of the forest or the new policy or the new type of recreation there. I mean, we have national organizations, well funded, that hire college kids to stop the process.

And some of those college kids 10 or 15 years later admit they are wrong. I am working with one now that was part of that process. He was wrong. He realized it was wrong. He was used.

That is the process we are dealing with that stops us, and I haven't seen a legitimate—what I would call a legitimate lawsuit by citizens who personally cared about the land.

Would you like to respond to that?

Mr. LAWRENCE. Well, I can respond for myself, from my organization. You know, while it is undoubtedly true that when I was a

college student I did things that were wrong, I didn't file timber sale appeals or litigation. I don't think it is totally beside the point that the last four lawsuits that I have filed papers in I have been defending the Forest Service, not suing it.

Some of those cases the Forest Service hasn't really shown up to defend. I think that there is undoubtedly in the litigation process some miscarriage of justice and some slippage. There is no question about that.

I think that is fundamental to our American way of government. I think that the right of citizens to seek redress in the courts, grievances against the government is something that is so fundamental to what be believe is the right way to conduct our public affairs that we accept and understand, and not just over Forest Service activities but over every aspects of our lives, public and private.

There will be some misuse of the court system , and I don't have an answer to that. I don't think that doing away with litigation is an answer. I do think there is some comfort in this, that when you get to court, if you are going to stop an activity, you have got to persuade a judge that you are likely to prevail and that you are going to suffer some sort of really serious harm if you don't get an injunction.

That is a serious hurdle to get over. It is not something that—you don't just show up at the court and stop activity. So there is some—there are some safeguards built into the system. But, again, there is nothing unique about Forest Service management activities in this regard. This is part of the American way of life.

Mr. PETERSON. But the litigation process has huge delays. Those cases don't get heard sometimes for months and months and months. So you lose a year, you lose 6 months, you lose another year, and so the process does really have really huge impacts while you are waiting on the courts to deal with it.

Mr. LAWRENCE. I don't want to try to defend every aspect of litigation. But normally when you get a preliminary injunction, courts thereafter treat your case on an expedited basis.

Mr. PETERSON. I don't want to pick on you, but I have been in the business world for 26 years, I have been in government longer than that at local, State and Federal. When I want to get decisions, I usually try to get all of the lawyers out of the room so we can make a policy decision and then let them argue about it, because you have all been taught to litigate, question, delay. That is part of the process.

I want to thank the witnesses on the second panel for their insights and the Members for their questions. The Members of the Subcommittee may have some additional questions for the witnesses. We ask you to respond to those in writing.

The hearing record will be held open for 10 days for those responses. If we have no further business before this Subcommittee, I want to thank the Members of the Subcommittee and our witnesses. This Subcommittee stands adjourned.

[Whereupon, at 5:15 p.m., the Subcommittee was adjourned.]